SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Department 19 Hon. Warren L. Ettinger, Judge

BETTY BULLOCK,
Plaintiff,
vs. NO. BC249171
PHILIP MORRIS, INCORPORATED, a corporation; et al.,
Defendants.

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
August 20, 2002

APPEARANCES:

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Volume ___ of ___ Ruanne McArthur CRR, RPR, CM, CSR#2699
Page 930 through 1070 Official Reporter

INDEX FOR AUGUST 20, 2002

M A S T E R I N D E X

Proceedings had August 20, 2002 Page
Opening Statement by Mr. Piuze
Opening Statement by Mr. Bleakley

http://legacy.library.ucsf.edu/tid/ijf07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/tpxl0001

930

Los Angeles, California August 20, 2002
Case Number: BC249171
Case Name: Bullock vs. Philip Morris
Department 19 Hon. Warren L. Ettinger, Judge
Reporter: Ruanne McArthur, CSR #2699
Time: 9:00 a.m. Session
Appearances: (As heretofore noted.)
-oOo-

(The following proceedings were held in open court outside the presence of the jury:)

THE COURT: Good morning.

(All respond.)

THE COURT: We are meeting here informally because I received motions regarding video cameras, and the court's ruling will be that the video cameras will not be permitted in the courtroom.

As far as still cameras are concerned, I have no objection if during a recess you wish to take a still picture of any of the lawyers or indeed any of the witnesses, if they don't object. If they do object to being photographed in here, just photograph them out in the hall, but I view the video camera would be contraproductive and it would be disruptive, and so we won't do it.

Okay. Having said that, that's the ruling on these motions, and you are, of course, welcome to

931

stay here during opening statement or anything else you want. It is an open courtroom and we're delighted to have you.

I would like to see that one person, Mrs. Perez, as soon as she arrives; and if you would just bring her in the back.

(A recess was taken in the proceedings.)

(The following proceedings were held in open court within the presence of the jury:)

THE COURT: Okay. Ladies and gentlemen, we are delighted to see you back and we're now in our home base.

The record will reflect the case of Bullock versus Philip Morris. The jurors are present and in the box. All counsel are present. Today is the day for opening statements.

No, sir, we are not going to have cameras during the session. Sir, we are not going to have them during the session. That means you are not going to stand, you are not going to focus them, we are not going to do it. We will give you as much time as you need during recesses. Thank you.

Mr. Piuze, will you make your opening statement at this time.

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MR. PIUZE: Sure.
THE COURT: Thank you.

* OPENING STATEMENT

BY MR. PIUZE

Good morning.

(All respond.)

MR. PIUZE: Well, you know me and you know them. I'd like to introduce my client through a couple of pictures and words, and I'm going to introduce their clients through some documents and some words, and so then we won't just have lawyers that we are dealing with, but we will have persons in the eyes of the law; Betty Bullock, Philip Morris.

Betty Bullock was born in 1938 in South Dakota. Philip Morris -- there was a Philip Morris -- was born in England and opened a tobacco shop, I believe, on Bond Street, but I may be wrong, on Bond Street in London in the 1800s.

Mrs. Bullock came to Los Angeles when she graduated from high school in South Dakota, and she arrived here in approximately the spring of 1956.

Philip Morris -- I don't know exactly when Philip Morris arrived in the United States, but over the course of time, Philip Morris became the largest cigarette manufacturer in the country, and Philip Morris currently lives, I guess you could say, either in

Virginia or New York City, new York City being where the corporate offices are and Richmond being where most of the manufacturing and research and plants are.

Ms. Bullock is about 63 years old. Philip Morris Corporation is older than that.

Ms. Bullock became a very good customer of Philip Morris, certainly not their best customer, but she was among their best customers. Philip Morris' main business is to sell tobacco. It's been their main business for a long time; and for I'd say since about 1956 or so, Ms. Bullock has been a good customer of Philip Morris.

Ms. Bullock's condition right now isn't good. Philip Morris' condition right now I can't comment on. But what I'd like you to do is take a look at Ms. Bullock on one of her better days and on one of her worst days, and then I am going to tell you a story about how Ms. Bullock and Philip Morris came together and stayed together over the course of 40 years or so.

So that's on a pretty good day. That's fairly recent, and that's her granddaughter and her daughter, her only child, and Ms. Bullock and that's a wig.

And there's Ms. Bullock and her only grandchild, and there's Ms. Bullock without her wig; and the reason she doesn't have any hair isn't because she wants to be fashionable, it's because of the treatment she has taken for lung cancer, cancer which has

metastasized -- fancy world for spread -- to her liver and which will kill her.

Part of the treatment causes the hair to fall out. That picture was take down in Orange County.

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5 It was taken someplace in the vicinity of -- sometime
6 during the last year or so.
7 Up until about 1915 or so, lung cancer was
8 almost unknown; and it's is possible that in 1912, when
9 the Titanic went down, that more people died on the one
10 boat that sank than died all over this whole country
11 from lung cancer, totally, because it was a virtually
12 unknown disease.
13 During the late Teens, Twenties -- I want
14 to interrupt a second here. We've got a cross-section
15 of ages on the jury. Some of the stuff I'm going to
16 tell you, some of you will remember, like I do, and on
17 some of the stuff I'm going to tell you, some of you who
18 are younger won't remember. The history I'm talking
19 about now is a little early for all of us, but there
20 will be evidence to back it up when the trial goes on.
21 Throughout the Twenties, Thirties,
22 Forties, slowly, the incidents of lung cancer increased,
23 and what had been almost an unknown disease -- you will
24 hear that doctors were told by their professors, "Come
25 on down here. There's someone with lung cancer. Take a
26 look at this. You will probably never see this again in
27 your entire life. Come take a look."
28 It went from that to becoming a huge

935

1 epidemic; and by the end of the Forties and
2 approximately 1950 or so, world-class scientists in
3 countries around the world were looking into the reason
4 that there was a major increase in lung cancer. No one
5 knew.
6 The first witness you are going to hear in
7 this trial, unless something very unusual occurs, is a
8 Sir Richard Doll, and he's called "Sir" because the
9 queen made him a knight.
10 During the course of the trial, I probably
11 never will call him Sir Richard Doll again. I will call
12 him Dr. Doll because he is a medical doctor and he is an
13 epidemiologist. An epidemiologist is someone who looks
14 at facts and patterns and tries to figure out what
15 causes illness or disease.
16 Dr. Doll is a world-renowned
17 epidemiologist. He has more awards from the President
18 of the United States and the United Nations and the
19 World Health Organization and every conceivable
20 organization that I could ever mention. He is right now
21 the world's greatest living scientist when it comes to
22 the connection between tobacco and lung cancer.
23 He was one of the first four people who
24 put out for the world the fact that in his opinion and
25 the other three doctors' opinion, tobacco caused lung
26 cancer.
27 And so here we are in 2002, and I'm
28 telling you these things and it's sort of "yawn, of

936

1 course, tobacco causes lung cancer," but it wasn't that
2 way; and as a matter of fact, until the last couple of
3 years, the tobacco industry generally and Philip Morris
4 specifically refused to concede that fact until 2000,
5 the year 2000, 50 years after Dr. Doll published his
6 first paper, Philip Morris and its industry mates in the
7 tobacco industry refused to acknowledge what they knew,
8 that in fact tobacco caused lung cancer, actively
9 covered up the fact that tobacco caused lung cancer, and

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10 presented a steady stream of misinformation,
11 disinformation, half-truths, quarter-truths, and
12 falsehoods to the American people, the American
13 government, California people, and Betty Bullock; and
14 the reason that the industry and Philip Morris did that
15 is money.
16 Anyway, back to 1950.
17 In the early Teens, machines that could
18 manufacture nice rolled cigarettes came into widespread
19 use. Up until that time, lots of people rolled their
20 own. It's a hassle. It takes a lot of time. With the
21 advent of high-speed machines to manufacture nicely
22 rolled cigarettes in large quantities, the popularity of
23 cigarettes took off tremendously; and whereas -- I am
24 not going to quote any numbers -- but a small amount of
25 people smoked cigarettes in 1900 or 1910 or 1915, once
26 these machines started spitting out these nicely rolled
27 cigarettes, the use of tobacco took off like that
28 (demonstrating.)

937

1 Two things were occurring very, very, very
2 few people made a connection. One thing that occurred
3 was there were more and more and more and more
4 cigarettes in our society. Another thing that occurred
5 later was that the lung cancer rates and other major
6 illness rates started creeping up.
7 When Dr. Doll started his study, he had no
8 clue and no belief and no thought in 1948-49 that there
9 was a link between smoking cigarettes and lung cancer.
10 His personal favorite, he will tell you, was the tar on
11 the roads. Because it was wasn't just cigarettes that
12 became widespread in the Twenties and Thirties and
13 Forties, it was automobiles.
14 Hard to believe, but we didn't have very
15 many cars in 1900, 1910, 1915, 1920; and with more and
16 more and more automobiles, there were more and more and
17 more paved roads, more and more tar; and it was
18 Dr. Doll's belief -- turned out he was wrong -- but it
19 was his belief that the tar that was put on the roads
20 was the cause of lung cancer.
21 Look. There had been people -- some in
22 Germany, a couple overseas, a doctor down in
23 New Orleans -- who in the Thirties and late Thirties,
24 every once in a while said they thought smoking might
25 have something to do with lung cancer, but this never
26 took hold. It wasn't generally accepted and it was a
27 nice theory that was put aside.
28 In 1950 Dr. Doll and his partner Hill,

938

1 published in England; and at the same time a Dr. Graham
2 published in the United States along with Dr. Wynder;
3 and in the most respected medical journals in both
4 England and the United States, almost simultaneously,
5 the scientific community and the medical community was
6 now told "smoking causes lung cancer."
7 And the reasons these doctors published
8 these results was that when they went into hospitals and
9 checked on lung-cancer patients and went through their
10 histories, some of them liked steak, some of them liked
11 fish, some of them lived in the country, some of them
12 lived in the city, some were men, some were women, some
13 were tall, some were short; but overwhelmingly, the one
14 thing they all had in common overwhelmingly was that

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15 they smoked cigarettes and that they were heavy smokers.
16 So with findings like that, these four
17 doctors, two on each continent, published their
18 results.
19 It had some pretty big implications, and
20 one of the reasons it had big implications is because by
21 1950, the tobacco industry was a very, very, very,
22 large, wealthy industry that made its money selling
23 cigarettes; and, of course, if it turned out that the
24 products that the industry sold were harmful to health,
25 then the industry might be forced to maybe instead of
26 growing tobacco, grow tomatoes or cotton or soybeans.
27 What started in the early 1950s was
28 something that the industry called "the controversy";

939

1 and the controversy had to do with whether or not
2 tobacco was truly harmful to health. Because the
3 tobacco industry and Philip Morris, although they knew
4 darn well that tobacco was dangerous to health, they
5 also knew darn well that if they admitted that, their
6 profits (demonstrating). And so the tobacco controversy
7 started.
8 And I am going to spend some time now
9 talking about the tobacco controversy. Before I go into
10 it, I would like to switch back to Ms. Bullock for a
11 bit.
12 1938 in South Dakota, which means that by
13 the time Ms. Bullock was, say, about 16 years old -- '38
14 and 16, that is about 1954. So I'd like to talk a
15 little bit about 1954 and the next couple of years and
16 where she was and what she was doing and how she fit
17 into the American culture. This is what the evidence
18 will show.
19 In 1954 Ms. Bullock was, I believe, in her
20 second year of high school and she was a cheerleader.
21 She belonged to a couple of clubs. She was a regular
22 student. She had a lot of brothers and sisters. Her
23 dad worked for the local radio station. Her mom was a
24 homemaker. She might have gone to parochial school, and
25 one of the things that she saw as a kid growing up was
26 the glamourization, and she has testified -- I guess I
27 should stop for a second.
28 I don't know whether you are going to see

940

1 Ms. Bullock in person or whether you are going to see
2 her only by videotape or whether you are going to see
3 her by videotape.
4 But you will see her. You will hear her.
5 I also would like to say that no matter what you hear
6 and how you hear it, she was taking chemotherapy at the
7 time that she testified or at the time that she will
8 testify; and her doctor has sort of candidly and maybe
9 sort of lightheartedly said that she has chemo-brain,
10 that the chemotherapy sort of has an effect on her
11 cognitive abilities.
12 Anyway, Ms. Bullock as a young girl
13 living out in the prairies of the Western United States
14 wanted to be grown up and she wanted to be glamorous and
15 she wanted to live in a big city. Of course, she got to
16 do all those things. She got to be grown up and she got
17 to be glamorous and she got to live in a big city.
18 In 1954 -- and there's a reason I am
19 starting in '54, which I am going to come back to in a

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20 bit. In 1954, which is the year that the tobacco
21 industry conspiracy -- and the evidence will show there
22 was an out-and-out conspiracy among all of the major
23 tobacco companies to cover up their knowledge and to
24 purposely create misinformation and doubt in the
25 minds -- misinformation and doubt in the minds of their
26 users.
27 In 1954, as a sophomore in high school who
28 wanted to be glamorous and grown up and live in a big

941

1 city, Ms. Bullock saw this. No, I'm jumping the gun.
2 I may have my years off one or two.
3 Forgive me. There's a lot of stuff floating around
4 here.
5 She saw this, and this is 1956. I was two
6 years off on this one. I apologize.
7 Now, the evidence is that Ms. Bullock
8 smoked over the course of her lifetime Marlboro -- talk
9 about that. That is a Philip Morris product -- L&Ms to
10 a small extent -- not a Philip Morris product -- and
11 Benson & Hedges, predominately over most of her years.
12 Benson & Hedges is another Philip Morris product.
13 The ad I am showing you isn't for Marlboro
14 or Benson & Hedges. It's for a cigarette called Philip
15 Morris, and this is a Philip Morris product, of course.
16 And she has picked out this particular ad
17 as one of many that she specifically remembers when she
18 was a young lady, and her dreams or aspirations or goals
19 of being glamorous and grown up and going to the big
20 city are embodied there.
21 In 1955-56, in that area, Philip Morris
22 Corporation, which was a major tobacco company but not
23 the biggest and probably not the second biggest, brought
24 out a new product; and it's new product has become the
25 largest selling cigarette there is, and after Coca-Cola,
26 the best recognized brand name there is; and when Philip
27 Morris brought out Marlboro in the mid-Fifties, although
28 it didn't know it at the time, it was bringing out its

942

1 key to unlimited success.
2 The earliest Marlboro ads -- we think
3 Marlboro, we think cowboys. The earliest Marlboro ads
4 weren't cowboys. The earliest Marlboro ads originally
5 were for tough guys, manly guys, guys who always wore
6 tattoos; but the Marlboro ads also were there.
7 I want to emphasize again, I am going to
8 be coming back to '54, but these ads that I am showing
9 you were put out after Philip Morris knew that its
10 product killed.
11 After the original appeal to tough guys,
12 the Marlboro ads changed to include Ms. Bullock or what
13 Ms. Bullock wanted to be; and so this particular one, I
14 believe, is from also around '55, '56, and this is
15 another ad that Ms. Bullock has specifically picked out
16 to say that she remembers seeing this.
17 You can look at these ads as hard as you
18 want -- upside down, with a microscope, or anything
19 else -- to find a warning or a label or anything like
20 that. It's not there. You will never see it. It just
21 isn't there.
22 And again from the same time frame, this
23 is another ad that Ms. Bullock picked out as one that
24 she specifically remembers; and it was because of seeing

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25 ads such as the ones I am showing you that when she
26 started smoking, she chose Marlboro; and although there
27 were some L&Ms in there for a little while, Marlboro
28 became her cigarette of choice and stayed her cigarette

943

1 of choice until later on when she switched to another
2 Philip Morris product. I will talk about that later.
3 An important part of what I'm saying now,
4 I believe, on behalf of Ms. Bullock, is that all of this
5 stuff here was happening around 1954, '55, '56.
6 Can everyone see that? Is that tilted the
7 right way?
8 In the year 2000, this is the year before
9 Ms. Bullock was diagnosed with lung cancer; and the year
10 2000, Philip Morris put up on its website that Philip
11 Morris agrees that cigarette smoking causes lung cancer;
12 and in the year 2000, Philip Morris put up on its
13 website the fact that smoking is addictive.
14 This happened -- I think Ms. Bullock was
15 diagnosed with lung cancer in February of 2001, after
16 being Philip Morris' customer since 1956 and listening
17 to Philip Morris repeatedly deny in the Fifties,
18 Sixties, Seventies, Eighties, and then as late as 1998
19 and 1999 that there was any scientific proof that
20 smoking caused lung cancer and the cause of lung cancer
21 was in doubt.
22 After listening to that all those years,
23 the evidence will be that ironically Philip Morris chose
24 finally to fess up within a year or so of the time
25 Ms. Bullock got diagnosed with lung cancer.
26 But now I would like to come back to
27 1954.
28 Prior to the 1950s, the tobacco industry

944

1 had had some antitrust issues; and because of that, when
2 the tobacco industry met in late 1953 and early 1954, it
3 may well have gone to the U.S. government in advance,
4 may have, and said, "Look it, we are going to meet as a
5 group here and discuss things. We are telling you in
6 advance." That may have happened; and the discussions
7 had to do with the fact that their industry was in
8 jeopardy because after 1950, the publications linking
9 bad diseases with smoking and especially lung cancer
10 with smoking, continued to come down the line from very
11 respected people.
12 There were some magazines, one especially,
13 the Reader's Digest, which was extremely anti-smoking;
14 and articles were published saying this stuff is
15 horrible stuff and something has to be done about it.
16 And I think the evidence is going to show
17 that in the early 1950s, maybe around '53, '54 in that
18 area, the tobacco industries' profits, sales and profits
19 dropped; and after cigarettes had increased, increased,
20 increased, increased, increased, increased in
21 consumption and with profits, all of a sudden the
22 profits dropped.
23 So in New York City the heads of all of
24 the tobacco companies, maybe with one exception, got
25 together and had a meeting; and the meeting was to
26 decide what to do about the fact that respectable
27 scientists said their product killed their best
28 customers; and I guess there were some options that were

945

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available. I have mentioned one. Stop growing it, sell soybeans. Or another option might have been to figure out what was wrong with it and fix it.

And another option might have been to say to all of their customers, "There's something wrong with it. We are going to try to fix it, but you probably shouldn't be using it until we fix it."

Or I guess another option would have been to say to their customers, "There's probably something wrong with it. Beware."

But the tobacco industry, including Philip Morris, didn't do that. Instead, the evidence will show, it hired a public relations firm; and the public relations firm was named Hill & Knowlton, headquartered in New York City; and one of the solutions that they came up with -- "they" meaning the heads of the industry and their public relations firm -- was to create an industry umbrella organization called the TIRC, Tobacco Industry Research Council.

And the TIRC announced its existence to the world on January 4, 1954 when it published a full-page ad -- I think it's in 443 papers around the country, but it's roughly 450, but I think the number is 443.

So a full-page ad was published in all of the major newspapers and not-so-major newspapers and intermediate-sized newspapers all over the United States, and this full-page ad was called "A Frank

946

Statement."

The tobacco industry that formed the Tobacco Industry Research Council included, among others, The American Tobacco Company, Brown & Williamson, Lorillard, Philip Morris R.J. Reynolds, United States Tobacco Company, and there are others; but all of the biggest players in the industry signed on to this and told their customers and would-be customers that "We accept an interest in people's health as a basic responsibility paramount to every other consideration in our business."

I am going to stop there for a second.

In the first week of January 1954 when the tobacco industry told the American population that it accepted an interest in people's health as a basic responsibility paramount to every other consideration, it was a lie. It was a lie at the instant the page was turned and that jumped out and that jumped out at all its good customers that smoke. It was a lie before it was sent to the publisher and it was a lie before the public relations firms dusted it up and got it ready for publication.

The tobacco industry got together voluntarily, knowingly, with a plan in mind, and formed a conspiracy; and Philip Morris was a part of that conspiracy; and the conspiracy was to lie on a massive scale and the conspiracy was to keep its business and the conspiracy was to keep its profits flowing; but

947

unfortunately, the conspiracy had a downside, the lives of their best customers.

So in 1954, which is the year that Ms. Bullock was a sophomore in high school and the year that she was thinking about becoming glamorous and grown

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up and moving to a big city, before any of those ads were ever placed, the tobacco industry, including Philip Morris, had gotten together and made a promise to her and to every other American who was smoking or was about to smoke, and promised them in writing for everybody to see that their health was number one: "We believe the products we make are not injurious to health." That was not true. They did not believe that.

"We always have and always will cooperate closely with those whose task it is to safeguard the public health."

That was not true.

When the Tobacco Industry Research Council and all of its members, including Philip Morris, said "We always have and always will cooperate with public health officials," that was a lie and it was a knowing lie and it had a reason, and the reason was to keep people coming back for more.

So I am going to have to disturb you now just for a second. Not much. Just a little. You can't quite see that, huh?

Here's what this case is about. This case is about why, if two years before Ms. Bullock started

948

smoking in 1954, Philip Morris and the tobacco industry promised to guard its customers' health, it took from '54 to '60 to '70 to '80 to '90 to 2000, 46 years -- why it took 46 years for Philip Morris to admit what it knew back then.

And this case is about the consequences of Philip Morris' cover-up and deception and misinformation and disinformation and outright lies to Ms. Bullock, America, the government, and focusing on the people of California.

Right now I think the evidence is going to show that every year in this state, just this state, 40,000 people every year die prematurely from tobacco. Now, this is happening despite the fact that California has probably the second lowest smoking rate of any state in the country after Utah; and despite the fact that we have the second lowest smoking of any state in the country, 40,000 Californians die a year from tobacco.

It didn't have to be; and so the consequences that we are going to be talking about during this trial are not just the personal consequences to Betty Bullock. The consequences we are going to be talking about are the consequences to the public health, the public health of California and its citizens and the public health generally.

So I am now going to fill in some gaps between 1954 and 2000 both for Philip Morris, society, the tobacco industry, and Ms. Bullock.

949

Here's a different part of "A Frank Statement" before I cover this up:

"Most important thing is the customer's health. We are going to cooperate with the public health authorities."

From over here.

"There are many possible causes of cancer. There is no agreement on what causes cancer.

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11 There is no proof that cigarette
12 smoking is one of the causes of
13 cancer."
14 The statistics -- let me put this down for
15 a second, please.
16 The statistics are what I mentioned
17 before. This is what epidemiologists deal with. This
18 is the fact when epidemiologists go through a hospital
19 and talk to lung cancer victims, it turns out there's --
20 they are 20 or 22 times more likely to get lung cancer
21 than a non-smoker. Those are the statistics.
22 And I also say that one of the things
23 Betty Bullock has testified to and has told Philip
24 Morris is that she recalls distinctly hearing again and
25 again and again the tobacco industry saying, "It's just
26 a bunch of statistics, it's just statistics, there's no
27 real proof"; and she told Philip Morris that she relied
28 on that fact. "They are just a bunch of statistics and

950

1 there is no proof."
2 Let's see how good her memory is.
3 The statistics purporting to link
4 cigarette smoking with disease could apply with equal
5 force to any one of many other aspects of modern life.
6 Indeed, the validity of those statistics themselves is
7 questioned by numerous authorities; and so on the day of
8 the promise that health was most important and that the
9 industry would work with the government, on that very
10 day, the industry said there is no proof at all that
11 smoking causes lung cancer. That was false. The
12 statistics could apply to anything else. That was
13 false.
14 And so on the same page where the promise
15 was made, the misinformation and disinformation and
16 quarter-truths and half-truths and non-truths were
17 published.
18 Three months -- two months after that
19 statement was published, the chief executive -- excuse
20 me -- George Weissman, who later became the chief
21 executive of Philip Morris, at the time he made this
22 statement he was the vice president.
23 In March of 1954, he said, "If we had any
24 thought or knowledge that we in any way were selling a
25 product harmful to consumers, we would stop business
26 tomorrow." And that was a flat-out lie; and that's a
27 theme that will be repeated as I show you some of the
28 highlight documents here, repeated again and again; but

951

1 there is a promise by one of the bosses of Philip Morris
2 that if tobacco is harmful, it would do the honorable
3 thing, not harm its customers, shut its doors.
4 In 1956, Ms. Bullock had her first
5 cigarette, probably '56 in South Dakota; and she tried
6 it sort of out of curiosity. "A cigarette, I see all
7 these people smoking them, it looks like a cool thing to
8 do, looks grown up, looks sophisticated. I want to try
9 it. She tried her first cigarette and it was
10 disgusting. It didn't taste good.
11 In 1956, Ms. Bullock graduated from high
12 school, left South Dakota, moved to the big city, moved
13 in with an aunt in the mid-Wilshire District. Before
14 too long got herself a job, a clerical job, and wanted
15 to be grown up; and wanting to be grown up, one of the

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16 first things she did was start smoking.
17 And the reason she has given for starting
18 smoking was she wanted to be a big girl. She wanted to
19 be grown up, so she smoked. Her aunt certainly didn't
20 care. There was absolutely no pressure not to smoke.
21 To the contrary, the evidence in this case will show
22 that by 1956 or so -- I may be off a couple years
23 here -- up to 60 percent, six-zero, of American men
24 smoked cigarettes; and although women smoking lagged
25 somewhat behind, it was increasing dramatically; and
26 especially in big cities such as Los Angeles, women
27 smoking was considered to be sophisticated or glamorous
28 or grown up and the thing to do.

952

1 Athletes did smoke and advertised their
2 product. Movie stars smoked, advertised the product.
3 Television advertising was everywhere. Television
4 advertising for cigarettes stopped in 1970. So
5 depending upon your age, you will remember or won't
6 remember, but it used to be that television advertising
7 for cigarettes was pervasive. Johnny Carson used to
8 smoke on the TONIGHT SHOW.
9 Edward R. Murrow -- Edward R. Murrow was
10 like the godfather of TV news. He worked for CBS.
11 Walter Cronkite -- I mean some of us hardly remember
12 Walter Cronkite, right? Walter Cronkite was one of his
13 boys.
14 In addition to being -- Murrow was like
15 Brokaw, Jennings, all of them, all thrown into one.
16 Don't want to forget Dan Rather or those other guys.
17 He also had a show called SEE IT NOW, and
18 he'd be on that show and he would be on the news and he
19 would be smoking right on the show. He was on the
20 newscast, smoking. Smoking was everywhere.
21 Until -- I wasn't pointing at that board.
22 I was actually pointing at the door.
23 When jurors got tired of hearing a
24 long-winded opening statement, they walked out that door
25 and had a cigarette right outside that door and judges
26 and lawyers. Smoking was the thing to do.
27 So she smoked. She started smoking. She
28 was a young woman living in Los Angeles, living with her

953

1 aunt, she started smoking, she took it up. It was
2 Marlboros. When she started out it was a couple a day,
3 and it went up and it was five a day and it got to be
4 half a pack a day.
5 In her 20s -- I will jump ahead -- she got
6 up to a pack a day. In her 30s she probably got up to a
7 pack and a half a day; and after that she got as high as
8 two packs a day and stayed there.
9 With several brief exceptions, during a
10 pregnancy, after being diagnosed with lung cancer,
11 Ms. Bullock has always smoked cigarettes since 1956.
12 The two brief exceptions, when she was
13 pregnant, she either cut back drastically or quit
14 briefly. It made her sick. And you ladies know more
15 about different things making you sick during pregnancy
16 than I ever will; but smoking made her sick so she
17 stopped smoking when she was pregnant or cut back
18 drastically, didn't quite stop.
19 Even after she was diagnosed with lung
20 cancer, she has never been able to completely stop.

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21 So why is that? Tobacco contains --
22 tobacco smoke contains nicotine. Nicotine is a drug.
23 Nicotine is the reason people want to smoke. They don't
24 know it, but you'll hear it here. Nicotine is
25 addictive. So of these documents I'm going to show you,
26 you'll see that Philip Morris denied that, wanted to
27 deny it, wanted to cover up that fact, ultimately
28 admitting it in the year 2000.

954

1 Nicotine, according to world-class
2 geniuses, is as addictive or more addictive than heroin.
3 One of the witnesses in this case is going
4 to be Dr. Neal Benowitz; and it's tough to schedule all
5 these things exactly, but the way we have it planned
6 right now, you are going to be listening to Dr. Benowitz
7 on Friday.
8 Dr. Benowitz works up in San Francisco.
9 He is a professor at the U.S. San Francisco Med School.
10 He is a professor on various topics, but he is
11 unquestionably, if not the single leading authority on
12 nicotine and addiction in the world, if he's not the
13 person, he's one of two or three or four.
14 And Dr. Benowitz, it turns out, was the
15 author of the Surgeon General's report on nicotine and
16 nicotine addiction. That part of the Surgeon General's
17 report is his; and so the person that wrote that report
18 is going to be right here telling you all about nicotine
19 addiction.
20 One thing I can say in advance is if I
21 held a gun to a nicotine addict's head and said, "If you
22 don't stop, I will kill your family," 99.5 percent would
23 stop and maybe it's 99.9 percent would stop. Addiction
24 doesn't mean it's impossible to stop because it's
25 possible to stop. Addiction means it's extremely
26 difficult and for some people excruciatingly difficult,
27 and for some people, all but impossible to stop.
28 And another thing you'll hear about

955

1 addiction is people who are addicts -- and this doesn't
2 have to be nicotine. This could be heroin or this could
3 be other substances. I don't want to get too technical.
4 Maybe cocaine, I don't know; but people who are addicts
5 need and will easily accept any rationale to keep their
6 conduct going.
7 And so someone who's got to have a
8 cigarette, got to have a cigarette, got to have a
9 cigarette and that person is told, "Don't worry, this
10 stuff might not be bad for you," or "Don't worry,
11 there's no proof that this stuff is bad for you," or
12 don't worry we wouldn't sell you anything that's bad for
13 you," someone who is addicted is much more likely to
14 listen to that message than someone like -- I will just
15 use myself as an example -- I don't smoke now. So I
16 wouldn't listen; but someone who is actively addicted to
17 nicotine is a target for the type of propaganda and the
18 type of misinformation that we are going to be talking
19 about during this trial.
20 So Betty Bullock here in Los Angeles,
21 1956. Betty Bullock stayed in Los Angeles for several
22 years. I have already said she worked as a clerical
23 person.
24 After a couple of years, she went back to
25 South Dakota. She got married to a high school

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sweetheart. She did what lots of ladies did and I guess still do, she put herself second to him, helped him go to school, worked two jobs, he woulnd up with a Ph.D.,

956

she wound up being tired.

He didn't like her smoking. She tried to hide it from him. His mother smoked a lot. He gave his mother grief about smoking. Ms. Bullock stood up for his mother and after several years and a child, that marriage ended. Ms. Bullock came back to Southern California.

I would just like to stop there for a second and come back to Philip Morris.

In South Dakota she continued to smoke. When she came back to Los Angeles, she continued to smoke. That was Mr. Weissman. I have already talked about him.

About the time roughly that Ms. Bullock was planning to come back, this document was generated at Philip Morris. I'm showing the jury internal documents which have not always been available and have only fairly recently come to light, most of them. I am going to continue showing the jury internal documents which were never available to me or the public until fairly recently.

Wakeham is a top dog at Philip Morris research. The year is 1959 and the parts that we have exploded here say:

> "In laboratory experiments it's been found that tar and/or certain compounds from cigarette smoke give rise to cancerous

957

> tumors in mice."

Let me stop there for a second. Several years earlier top U.S. scientists have taken tar -- when you inhale to get the nicotine, one of the by-products is tar. You will hear that tar is the bad stuff. Tar is the stuff that causes cancer and tar is the stuff that causes other bad diseases.

A couple of years earlier, top U.S. scientists have taken some of this tar and painted it onto the back of mice and shaved the fur off of the mice, painted this tar on mice, the mice got cancerous tumors. These scientists thought this is pretty important here.

The tobacco industry made fun of that, pointed out that people don't shave their backs and paint stuff on their backs and said, "That's a bunch than of baloney. Don't listen to that. It doesn't prove anything."

But inside of Philip Morris in 1959, this is being discussed; and inside of Philip Morris one of the comments that was made is whether or not cigarette smoking is a, quote, "cause," close quotes, of lung cancer is a matter of definition.

And as you'll see as I show you a few documents during opening statement -- and I'd like you to listen during the trial for this question about cause -- until the day before that went up on the website, Philip Morris and the tobacco industry

958

questioned whether tobacco was really the cause of lung

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2 cancer and thought that the cause had not been proven
3 and put out a steady stream of information that there
4 was no scientific real known cause and anyone who said
5 differently, whether it was the government or the
6 Surgeon General or private doctors, they didn't know
7 what they were talking about.
8 So this is the first time that, at least
9 in the documents I'm showing you today, that the issue
10 about what is the real cause comes up.
11 In 1961, again at Philip Morris, you again
12 see Dr. Wakeham's name. He tells the research and
13 development committee all of the things that cause
14 cancer, all of the things in tobacco smoke that cause
15 cancer; and so here we are inside of their research and
16 development building seeing what they're talking about,
17 but just outside of the building, they are saying "We
18 got no clue what causes cancer. There is no proof what
19 causes cancer. We are looking into what causes cancer.
20 Bear with us. Keep buying."
21 In 1964, the Surgeon General of the United
22 States, the first Surgeon General's report, and the
23 Surgeon General's report was that now a government, a
24 portion of the government was on record as saying, "We
25 have concluded smoking causes lung cancer. We have
26 concluded that." And it was a pretty big deal at the
27 time.
28 So ten years after this 1954 problem when

959

1 sales dipped, profits dipped, and something had to
2 happen, now it came back again because now a portion of
3 the United States government was saying it looks like
4 smoking causes lung cancer. Here's a Philip Morris
5 reaction.
6 Here's a Philip Morris reaction. This is
7 January 29, 1964. This is within approximately four
8 weeks of the Surgeon General's report. Right here. "At
9 some point reflecting the same seriousness with which we
10 met the report, we must, in the near future, provide
11 some answers which will give Betty Bullock a
12 psychological crutch and a self-rationale to keep
13 smoking."
14 Now it doesn't say Betty Bullock there. I
15 put it in; and it doesn't say Sarah Smith or Joe Jones.
16 "We must in the near future provide
17 answers which will give smokers a psychological crutch
18 and a self-rationale to continue smoking."
19 So in '54 and '64, "If we had any thought
20 or knowledge that in any way we were selling a product
21 harmful to consumers, we would stop business tomorrow";
22 and when the Surgeon General told them they had a
23 product that was harmful to consumers and the Surgeon
24 General wasn't telling them anything they didn't already
25 know, their response was "We got to figure out a way to
26 keep these people smoking."
27 And here's part of what they figured out.
28 Your Honor, I saw your head move. Do you

960

1 have a preference? I can keep going. It's your call.
2 THE COURT: No. I think we will go until 10:30.
3 MR. PIUZE: Okay.
4 THE COURT: Unless you would like to break at
5 this time.
6 MR. PIUZE: No. I'm good, although there are 16

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votes here, but I'm good for now.

THE COURT: We will go another 15 minutes.

Let's do it this way: Is it okay with everybody in the jury if we go another 15 minutes? If not, raise your hands. Okay. You are on for 15 minutes.

MR. PIUZE: '54, '64, the next thing I'm going to show you is from 1971.

By 1971, Ms. Bullock had gotten married for the second time; and strangely enough, she married a man named Bullock. He was in the construction business. She moved down to [DELETE] and lived with him. And by the way, their marriage ended quite a while ago. I don't know exactly, but maybe 15 years ago or more, and she has never gotten married a third time. She has been on her own for a long time; but she married Mr. Bullock.

Mr. Bullock smoked Benson & Hedges cigarettes. Miss Bullock, right around that time, maybe a little bit before, switched to Benson & Hedges cigarettes. I'll show you -- why don't I show you.

There's sort of a continuing theme. This

961

particular ad comes way further up in the story when warnings finally came on these ads here, but the reason I'm showing you this particular ad is that it had been Miss Bullock's desire to be grown up and glamorous and, of course, this was her ticket to being grown up and glamorous still.

So she switched to Benson & Hedges; and the evidence is going to be that she smoked Benson & Hedges forever and ever and ever; and I think the evidence is that she still sneaks Benson & Hedges now, and that's what the evidence is going to be.

There were two Surgeon General's warnings. In 1964 what I just showed you was the report. Two years later, as a result of that report, warnings went on the sides of cigarettes, 1966; and what the original warnings said were, I think, "Caution: Cigarettes may be hazardous."

When those warnings went up there, Ms. Bullock had been smoking for ten years. When the warnings went up there, Ms. Bullock was addicted. When the warnings went up there, they were refuted by the tobacco industry who said, "It's a bunch of baloney. We have no clue if that's true."

When the warnings went up there, the people who smoked, everyone -- everyone was told this, but the people that really heard it were the people that smoked.

"That's just big government trying to

962

spoil your fun. That's just big government intruding into your lives one more time. It really isn't true. We don't know. We, the industry, don't know at all if this stuff is going to hurt you."

So that was '66. In '69 the warnings got stronger; and in '69 it went from "Cause" to "Warning." And in '69 it went from "Cigarettes may be harmful to your health" to "Cigarettes are dangerous."

So '64 is the Surgeon General's report, '66 is the first warning, '69 are the stronger warnings.

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12 In 1970, cigarette advertising was taken
13 off of television; and so again, depending upon age,
14 that would be the last shot -- we will show you some
15 commercials from television during the trial; but that
16 would have been the last shot to actually see cigarettes
17 advertised on television with no warnings.
18 And here is CBS's FACE THE NATION. They
19 interviewed the chairman of the board of Philip Morris,
20 and this interview was on January 3, 1971. So we are
21 talking immediately after the advertising was stopped;
22 and in this interview he said, "We do not believe that
23 cigarettes are hazardous. We do not accept that."
24 And he also said, "I believe that
25 cigarettes have not been proved to be unsafe."
26 So this was for the American people on
27 CBS, and this was Philip Morris' view that after
28 promising that health was paramount, they were still

963

1 saying they believed that these things are okay. "We
2 don't believe they are hazardous. We don't believe
3 there's any proof they are unsafe."
4 I would like to switch to something else
5 now.
6 THE COURT: This might be a good time to take
7 our break while you are switching and not break up your
8 train of thought. Would that be all right, Mr. Piuze?
9 MR. PIUZE: Great. That's fine.
10 THE COURT: All right. I would like everyone to
11 remain seated. I would like the jury to be able to
12 leave the courtroom. We are going to take a 15-minute
13 recess, and then I want to chat with the people who
14 remain in the courtroom.
15 So, Mr. Piuze, do you want to give us a
16 hand with moving some of these posters so that we are
17 not going to --
18 MR. PIUZE: Yes.
19 THE COURT: Actually, we just need to worry
20 about that and then they can all file out.
21 MR. PIUZE: It isn't heavy.
22 THE COURT: I just don't want anybody tripping
23 on it. Thank you.
24 All right. Ladies and gentlemen, you are
25 free to leave.
26 THE COURT: Just remember the admonition.
27 (A pause in the proceedings.)
28

964

1 (The following proceedings were held
2 in open court outside the presence
3 of the jury:)
4
5 THE COURT: Ladies and gentlemen, let me
6 explain a problem that we have both as to security and
7 as to safety. You are obviously all welcome here, but
8 only as many of you as can find seats. If there is no
9 seat, you may not be in here. You can't stand in the
10 aisles. You can't stand up against the wall. We just
11 have to have everybody seated.
12 So when you come back, look around. It's
13 like musical chairs. If you find a chair, you are
14 welcome. If you don't find a chair, you are going to
15 have to wait until the next break.
16 We will be in recess for 15 minutes.

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17 Thank you.
18
19 (A recess was taken in the proceedings.)
20
21 (The following proceedings were held
22 in open court within the presence of
23 the jury:)
24
25 THE COURT: All right. The record will reflect
26 the jury is present, at least most of them are. I
27 can't -- there may be two more over there. I can't
28 quite; see, but I will take your word for it; and

1 counsel are present.
2 You may continue with your opening
3 statement.
4 MR. PIUZE: Thank you.
5 I didn't say it earlier. Thank you for
6 being on the jury.
7 There's no coincidence that Ms. Bullock
8 was 17 years old when she started smoking. The evidence
9 is going to show that most smokers start when they are
10 teenagers, and the evidence is further going to show
11 that probably teenagers are targeted more for smoking
12 than any other group; and the evidence is going to show
13 that through witnesses and documents.
14 Two of the witnesses who will testify for
15 the plaintiff on this issue are named Slovic and
16 Goldberg. Dr. Slovic is a former professor at the
17 University of Oregon who's got at least a national
18 reputation when it comes to issues involving risk
19 assessment and the psychology of risk.
20 And Dr. Goldberg, he's the chairman of the
21 department of marketing, I believe, at Penn State
22 University and an advertising expert.
23 Both of them have consulted with and
24 counseled the United States of America, among other
25 governmental entities, on their views and have worked
26 for the United States of America and other national,
27 international, and state governments on their
28 specialties as it involves tobacco.

1 And I think for our purposes today, I'd
2 best summarize the evidence that you are going to hear.
3 Why don't I start with Philip Morris' view.
4 In March of 1981, at the research center,
5 one of the documents that we have obtained includes the
6 following. It has to do with young smokers, and it
7 says:
8 "It is important to know as
9 much as possible about teenage
10 smoking patterns and attitudes.
11 Today's teenager is tomorrow's
12 potential regular customer, and
13 an overwhelming majority of
14 smokers first begin to smoke
15 while still in their teens. The
16 smoking patterns of teenagers are
17 particularly important to Philip
18 Morris."
19 And then this memo went on to explain why.
20 "It is during the teenage
21 years that the initial brand

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22 choice is made. At least part of
23 the success of Marlboro Red
24 during its most rapid growth
25 period was because it became
26 the" -- and I didn't underline
27 that, Philip Morris did -- "it
28 became the brand of choice among

967

1 teenagers who then stuck with it
2 as they grew older."
3 And at around the same time and as a
4 matter of fact as part of the same document, I believe,
5 we can see that Philip Morris was tracking smoking
6 trends all the way down to 12-year-olds and that Philip
7 Morris was interested in seeing who is a -- this is
8 their phrase now -- current regular smoker. They were
9 interested in seeing how there were more smokers or
10 perhaps less smokers by age with the passage of time;
11 and they tracked kids all the way down to the age of
12 12.
13 From the same document again:
14 "The implications are that
15 we will no longer be able to rely
16 on a rapidly increasing pool of
17 teenagers from which to replace
18 smokers."
19 And the reason they knew the reason they
20 had to replace smokers, is because their best customers
21 died already.
22 The evidence will be that 15 percent of
23 their long-term male customers die of lung cancer,
24 10 percent of their long-term female customers die of
25 lung cancer; and so unlike people that make toasters or
26 breakfast cereal, they realize that the product itself
27 was diminishing the amount of customers, and so they
28 were looking to see when and where they are going to

968

1 replace their best customers.
2 "Because of our high share
3 of the market among the youngest
4 smokers, Philip Morris will
5 suffer more than the other
6 companies from the decline in the
7 number of teenage smokers."
8 And along the same lines, it got more
9 sophisticated than that, because six months later, still
10 in 1981, there were studies and discussions going on
11 within Philip Morris about what happens if the federal
12 government increases taxes on cigarettes; and someone
13 observed that for kids, a rise in taxes for kids would
14 be harmful to Philip Morris, because when it comes to a
15 choice between smoking cigarettes or cruising around in
16 his car, the average teenage male would take the
17 cruising in the car over the cigarettes; and that if the
18 tax was allowed to increase substantially, it was going
19 to hurt their percentage of teenage smokers.
20 And so this company's response to a
21 potential rise in federal excise tax had to do with "Are
22 we going to not be able to sell as many to kids
23 anymore?"
24 Ms. Bullock was part of the majority of
25 people who start smoking in their teens. That's still a
26 true fact today. The majority of people start smoking

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27 in their teens. As Philip Morris acknowledges here, the
28 habits start in the teens, goes all the way down the

969

1 brand of choice. Once you get in the habit in your
2 teens, you tend to stick with the habit.
3 Now, an issue that will be discussed, to
4 some extent -- a little here, a little there --
5 throughout the case, has to do with Philip Morris'
6 purposeful targeting of teenage smokers; and I think
7 you'll hear from Philip Morris, I anticipate, about
8 changes they have made recently, and we will see what
9 changes they have made, and we will discuss what changes
10 they made.
11 But I don't think there will be any
12 discussion that the company, this corporation, targeted
13 teenagers over a course of decades and tried to get
14 teenagers all the way down -- they are watching kids all
15 the way down to the age of 12 -- to smoke, to become
16 their regular customers.
17 From '54 to 2000 is 46 years, so this is
18 18 years down the line. This probably fits in right
19 about here because this is 1972; and just to put it in
20 perspective, 1972, we had a war in Vietnam that was
21 still going on. Richard Nixon had just been elected to
22 his second term as President of the United States. The
23 Sixties, an extremely turbulent period in American
24 history, that among other things saw the death of
25 Kennedy, King, Kennedy, Malcolm X.
26 We had come through that period. There
27 was lots of heavy-duty stuff going on in the Sixties,
28 especially in the late Sixties. A drug culture arose in

970

1 the United States for a while. What's been called
2 sexual freedom or sexual revolution arose in the United
3 States around that time.
4 There were riots on campuses. There was a
5 big deal about our involvement in a war far away.
6 Maybe the best boxer in the world lost his title because
7 he didn't want to go fight the Viet Cong. A lot of
8 stuff was going on in American society.
9 And in around 1972 now -- the reason I
10 told you that is, although we are going to be focusing
11 on tobacco during this trial and tobacco and tobacco and
12 tobacco and health, there was lots of other stuff going
13 on. There was lots of other stuff going on for smokers;
14 there was lots of other stuff going on for the
15 population. Heavy-duty stuff.
16 Anyway, May 1972, this document is
17 generated within something called the Tobacco Institute,
18 and let me just stop here for a second. I told you
19 earlier that in 1954, that document, it announced -- it
20 announced the existence of the Tobacco Industry Research
21 Council, TIRC; and later on that organization, as you
22 will see with documents throughout this trial, its name
23 changed to the Committee for Tobacco Research.
24 And the idea was, what the people were
25 told was, they were going to be doing research to guard
26 the public's health. There was yet another
27 organization. It was called the Tobacco Institute; and
28 the Tobacco Institute, Philip Morris was part of it, the

971

1 big companies were part of it.
2 And the Tobacco Institute, it had a

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3 slightly different goal, and it was more admittedly, on
4 the surface admittedly, more of a public relations kind
5 of operation.
6 We will show in this trial that this
7 Tobacco Industry Research Council and its successor,
8 they were just glorified P.I. groups to cover up, to
9 create doubt; but this one here, this one was more
10 admittedly a public relations operation, and this comes
11 from the Tobacco Institute. Philip Morris and the other
12 major players are part of it.
13 In 1972, if Ms. Bullock was born in 1938,
14 she would have been about 34 years old; and she was a
15 34-year-old smoker who was smoking more than a pack a
16 day, maybe up to a pack and a half a day. She was a
17 good Philip Morris customer. She had a little girl, a
18 husband, leading the life down in Orange County.
19 Fred Panzer was the vice president of the
20 Tobacco Institute. Horace Kornegay was the boss of the
21 Tobacco Institute.
22 As part of this memo, it is observed:
23 "For nearly twenty years,
24 this industry has employed a
25 single strategy to defend
26 itself on three major fronts;
27 litigation, politics, and public
28 opinion. While the strategy was

1 brilliantly conceived and
2 executed over the years, helping
3 us to win important battles, it
4 is only fair to say that it is
5 not, nor was it ever intended to
6 be, a vehicle for victory."
7 Now, make no doubt about it, these folks
8 were fighting a war and they were fighting a war for
9 their survival as an industry and they were fighting a
10 war for their profits; and so when we are talking about
11 victory, we are not doing it halfheartedly here.
12 "A vehicle for victory." On the
13 contrary, it has always been a holding strategy, and the
14 holding strategy consists of -- now, this last line
15 here is important enough to stand alone, because if
16 there's a nutshell, this is it.
17 When they promised that people's health
18 was a basic responsibility paramount -- more important
19 than -- anything else, that's what they said; this is
20 what they did. The industry strategy, brilliantly
21 conceived, which hasn't led to victory yet, is to
22 purposely create doubt about the health charge without
23 actually denying it.
24 And in -- if I could capture in one hand,
25 in one phrase, in one nutshell, I will use their words,
26 "To provide disinformation, misinformation, and to
27 create doubt," when this document is shown during the
28 trial; and you see the whole document, you'll see that

1 Mr. Panzer flat-out says:
2 "We are going to target two
3 groups to create that. We are
4 going to target tobacco state
5 congressmen, we are going to
6 target heavy smokers, and what we
7 want to do is create doubt in the

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8 minds of heavy smokers about the
9 health charge."
10 And this message could have been
11 pointed -- could have been put in an envelope and sent
12 right to Ms. Bullock's home. Because as you will hear
13 her say, she was very confused about the health issues.
14 She was aware of the warnings on the pack. She was
15 aware that the Surgeon General said she better watch
16 out. She was aware that the tobacco industry and Philip
17 Morris told her not to worry.
18 She was aware that the industry said,
19 "There is no scientific proof." She was aware that the
20 industry said, "We wouldn't harm you." And also, silly
21 as it sounds, you will hear her testify that she could
22 not conceive that CEOs of major American corporations
23 would flat-out purposely lie about something as
24 important as health and life and death.
25 So she was born in another time and
26
27 Another place and in 1958 in South Dakota or 1938 in
28 South Dakota, she couldn't even conceive that a huge

974

1 industry would look its best customers in the eye and
2 lie.
3 And now to her embarrassment, she knows
4 she was wrong. And now to her embarrassment, you will
5 hear her testify that she believes she's partially at
6 fault here for believing this stuff; and she is ashamed
7 of herself for listening to this stuff and believing it;
8 and looking back on it, she says, "How could I be so
9 stupid?"
10 But Ms. Bullock also says, "Why couldn't I
11 rely on them?" Why should I think they were liars? Why
12 should I think they lie about untold" -- and I mean
13 untold -- "tens of thousands, hundreds of thousands,
14 millions of lives? It never occurred to me people would
15 do that."
16 While the promises were made to guard
17 health and while the promises were made to cooperate
18 with government, what was going on behind closed doors
19 was something very, very different. I will give you a
20 flavor.
21 There's no signature here, there's no
22 Philip Morris name here, but I can show you this because
23 we can prove whose handwriting it is; and we can prove
24 whose handwriting it is a bunch of ways, but the most
25 important one for us now is that one of the witnesses
26 for the plaintiff recognizes that handwriting; and this
27 particular witness for the plaintiff is a man named
28 Dr. William Farone.

975

1 Dr. Farone is a chemist, and at one time
2 Dr. Farone was one of the handful of the ranking
3 scientists at Philip Morris. He's an ex-employee. He
4 worked there from roughly 1976 until 1984.
5 Before the time he went there, he had been
6 one of the top researchers or the -- maybe the head of
7 research -- I am not positive -- at Unilever. Unilever
8 is a giant corporation. They make toothpaste,
9 mouthwash, all that stuff, and he was the boss scientist
10 there.
11 One of the things that he did there was he
12 helped oversee testing the goods to make sure it

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wouldn't hurt people. So I guess if you are going to use some new kind of mouthwash, you test it on rabbits or something like that to make sure it won't hurt people. He had a long background there.

When he left that company, after a brief stint with another one, a headhunter came knocking on his door and said, "Philip Morris is looking for a real top-dog chemist to come to their company and help them out. Would you be interested?"

So Mr. Farone was -- I should say doctor. He is a doctor. Dr. Farone, Ph.D. doctor, was recruited by Philip Morris, went to work there; and in 1976, when he went to work there, you are going to see documents way after '76 in which they continued to deny any knowledge at all about health risks.

But you'll hear from the inside how in

976

1976, when he walked in the front door, one of the first things he was told is: "We got a problem here, and our problem is that our product kills people and it's addictive; and you're sort of a genius, so we want you to come in here, and we want you to help us to try to make this safer; and we also want you to help us to find some new businesses to get into because pretty soon the government is going to do something about this."

So he went to work there; and as I say, he worked there for eight years. During the time he worked there, one of the people he worked very, very, very closely with is the man that wrote this document, Dr. Osdene; and Dr. Farone knows this is Dr. Osdene's handwriting. There will be no dispute in the trial that this is Dr. Osdene who is writing this; and I will remind you again, this is one of the top research scientists at Philip Morris.

So here's what he has to say in this handwritten note. He calls this, "Defense research, Philip Morris." So he's being candid. This isn't research for the health of the customers. This is research for the defense of the company.

He mentioned Cologne right there: "Ship all documents to Cologne by Tom." Cologne is a city in Germany, and Cologne is a place where there was a big laboratory that Philip Morris owned called INBIFO. Research, important research, was done in Cologne. It was not done in the United States of America, and it was

977

not done in the United States of America for a reason.

You will hear that the major tobacco organizations, Philip Morris, the other big ones, reached a so-called gentleman's agreement; and the gentleman's agreement was that there would be no cigarette health research done here on the shores of the United States of America.

In other words, even though they are going to go out and try to be sure everything is safe, there was a secret agreement that they would never do any health research here in America, with good reason. Because if this stuff turned out wrong -- "wrong" meaning they find out for sure that their stuff hurts, kills -- they don't want it falling into the wrong hands.

So now that I have explained Cologne:

"Ship all documents to

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18 Cologne by Tom. Keep in
19 Cologne. OK to phone & telex
20 (these will be destroyed).
21 Please make available File
22 Cabinet (for documents). We will
23 monitor in person every two to
24 three months. If important
25 letters or documents have to be
26 sent, please send to home."
27 And this is Osdene's home.
28 "I will act on them &

978

1 destroy. Advise Rylander" -- and
2 you'll hear that Rylander was a
3 top-dog researcher in INBIFO --
4 "advise Rylander when writing re
5 INBIFO."
6 Now, these initials down in the last one,
7 TSO, is Tom Osdene. So here in this guy's own
8 handwriting is proof positive that if any of the
9 research Philip Morris was doing on tobacco and health
10 turned out the wrong way, he was going to destroy it.
11 And I've got one more. There are two sort
12 of issues that overlap and come back and forth together
13 and will throughout this trial; and one of the issues
14 has to do with -- imagine what it's like for me.
15 (Laughter.)
16 One of the issues has to do with
17 addiction; and you will see that although they admit
18 it -- "they" meaning Philip Morris -- admit it, it's on
19 the website here about addiction, that there was a heck
20 of a fight about addiction all the way through here, and
21 Philip Morris and the industry said, "No, no, no, the
22 stuff isn't addicting."
23 Before I show you this document, here's
24 the best insight into why that discussion went on. I am
25 just jumping ahead a little bit, but I guess I couldn't
26 have put it any better if I was writing it.
27 In 1980 they are told:
28 "The entire matter of

979

1 addiction is the most potent
2 weapon a prosecuting attorney can
3 have in a lung cancer cigarette
4 case. We can't defend continued
5 smoking as free choice if the
6 person was addicted."
7 So 22 years ago they are discussing some
8 of the issues that we are going to be discussing, and
9 there it is, right to the point. If someone is
10 addicted, how can we, the cigarette industry, say it's
11 free choice?
12 So with that as background, here's what we
13 see three years earlier. This is also from Thomas
14 Osdene, Ph.D., doctor, Philip Morris' big-time boss.
15 He's talking about a lady named Carolyn Levy, who is
16 another Ph.D. scientist at Philip Morris.
17 "I have given Carolyn
18 approval to proceed with this
19 study. If she is able to
20 demonstrate, as she anticipates,
21 no withdrawal effects of
22 nicotine, we will want to pursue

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23 this avenue with some vigor."
24 "If, however, the results
25 with nicotine are similar to
26 those gotten with morphine and
27 caffeine, we will want to bury
28 it."

980

1 Now, this time the underlining is mine.
2 Accordingly, there are only two copies of this memo,
3 the one attached and the original, which is being shown
4 here in court 25 years later.
5 And so not only was it a corporate policy
6 of Philip Morris to destroy negative evidence on tobacco
7 and health, but it was a corporate policy of Philip
8 Morris to bury evidence that showed addiction; and, of
9 course, these documents candidly, in his own words, have
10 to do with defense, not health.
11 This research wasn't done to protect the
12 health of their customer. This research was done or
13 destroyed or buried to protect the health of Philip
14 Morris' profits.
15 I think this is either the last or the
16 next to the last blowup on this issue that I am going to
17 show you before I move on to another topic; but to put
18 this in perspective, 1980, if Ms. Bullock was born in
19 '38, now she's a 42-year-old lady and she's a
20 42-year-old lady with a daughter.
21 And my arithmetic sometimes is pretty good
22 and sometimes, for birthdays, it's not so good; but I
23 have a feeling her daughter was probably a sort of late
24 teenager at the time. I have a feeling that her
25 daughter -- she was 22 when the daughter was born.
26 Anyway, the evidence is going to show here
27 in this court from Ms. Bullock, from her daughter, that
28 pretty early on her daughter took a dislike for smoking,

981

1 and pretty early on her daughter started getting on her
2 mom about, "Stop it. It's gross. Stop it. It's
3 disgusting. Stop it. I don't like the smoke. It
4 smells. It stinks. It's not good for you. You are an
5 athlete, you are a skier, don't do that. Bad for your
6 wind. Makes you cough."
7 Anyway, around 1980, that's where
8 Ms. Bullock was, 42-year-old lady, daughter; and this
9 was Philip Morris' mind-set. Selling them is the boss
10 of research at Philip Morris at the time, the number
11 one; and Spears is his counterpart at Lorillard, which
12 is another major tobacco company; and so the boss of one
13 of these company's research is writing to the boss of
14 the other company's research and what he says is, right
15 there on Philip Morris stationery:
16 "Here's what we want to
17 avoid. We want to avoid any
18 attempt to relate human disease
19 to smoking. We want to avoid
20 developing any kind of tests to
21 show stuff causes cancer."
22 That's 26 years downstream from accepting
23 an interest in people's health as a basic
24 responsibility, more important than anything else in our
25 business, and 26 years later, maybe in our time line
26 right around here, the last thing we want to do is find
27 out that smoking causes disease.

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28 How did that affect Ms. Bullock? Well,

982

1 while that was going on -- I am going to jump back. I
2 got this out of order. I apologize. Part of our case.
3 While all this was going on, a vice
4 president at Philip Morris wrote to the president of the
5 Tobacco Institute, and the president of the Tobacco
6 Institute is a former U.S. senator. So he was a
7 senator, he's not a senator, and now he's president of
8 the tobacco industry.
9 This man, Helmut Wakeham, and you are
10 going to hear about him again as we go along, says:
11 "Our medical research
12 efforts through the Committee for
13 Tobacco Research and the AMA
14 have been confusing and
15 contradictory in the public eye
16 because we have on the one hand
17 proclaimed these endeavors to be
18 aimed at finding the truth about
19 smoking and health and at the
20 same time denying the existence
21 of a problem."
22 And he further says:
23 "The fact that a
24 multibillion dollar industry has
25 put up $30 million over a
26 ten-year period cannot be
27 impressive to the public when we
28 spend over $300 million every

983

1 year on advertising."
2 And the last insider document I am going
3 to show before I talk about Ms. Bullock again now is
4 this. 1984. We are 30 years downstream now.
5 Ms. Bullock is 46 years old. This is to the United
6 States Congress, and the industry goes into Washington
7 into a hearing to the Congress and 30 years after that
8 promise says, "We don't know whether smoking has a role
9 in the development of diseases, and we need a lot more
10 research to figure it out."
11 Now, I don't know if the congressmen, if
12 they read it; and I don't know if the congressmen's
13 staffers, if they read it, believed it; but I do know
14 that addicted smokers believed it; and I do know --
15 Your Honor, I will take that away in a
16 second.
17 THE COURT: That's all right.
18 MR. PIUZE: I know I can't do it.
19 This from '72 here, "To create doubt
20 without actually denying it" aimed at heavy smokers and
21 tobacco state congressmen.
22 Twelve years later, there it is in
23 action. "Gee, we don't know what causes it. Gee, we've
24 only had 30 years since we made our promise. We need
25 more research." And I will guarantee you that two twin
26 things happened during that 12 years here; they made a
27 ton of money, they killed a ton of people.
28 Lung cancer is a fatal disease. So it's

984

1 for sure that Ms. Bullock is going to die. Starting
2 sometime in the Eighties, she got bronchitis; and
3 starting sometime in the late Eighties, she had the

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4 first of several bouts of pneumonia that she got.
5 And starting certainly in the Eighties,
6 she'd go to doctors for various reasons. I think most
7 frequently -- you know, you get into people's medical
8 records and it gets like a little embarrassing
9 sometimes -- but most frequently it was for urinary
10 tract infections; and when she was in being examined
11 for a urinary tract infection, the doctors would note
12 that she also had a cough or she had bronchitis.
13 Sometimes she would go in primarily for
14 bronchitis. Occasionally it would be for female
15 problems or just a gynecological checkup.
16 But while she was there, as part of the
17 smoking -- as part of the health history, it would be
18 noted that she started smoking long ago; and some of
19 these health histories vary. Some will say she started
20 smoking at 28, which is way off. They all say that she
21 cut back when she had her daughter, which was around
22 22. Lots of them, especially the detailed ones, say she
23 started smoking as a teenager.
24 Anyway, she acknowledges that doctors on
25 many occasions when she was in there said, "This stuff
26 isn't good for you. Stop." And she acknowledges that
27 she wanted to.
28 She tried at one time hypnotism. At one

985

1 time she tried graduated filters; and that's the kind of
2 thing, I believe, where there are different filters that
3 filter out more and more of the stuff and so you get
4 less and less, and pretty soon you're sucking on it so
5 hard, you don't care anymore and supposedly you give up.
6 She tried at one point gum with nicotine
7 in it, several times, lots of times. Nicotine patches,
8 nicotine -- a different kind of nicotine delivery
9 system. Zyban, more recently, a different supposedly
10 better way to get people to stop smoking.
11 And at least on one occasion in 1998
12 during a conversation with a Dr. Rodas, she said to
13 Dr. Rodas that she was disgusted with herself. I want
14 to get this right. Excuse me. She felt guilty. She
15 felt -- this is before she was diagnosed with any
16 cancer. She felt guilty. She felt shame. She felt
17 embarrassment; and she expressed extreme remorse
18 because -- and embarrassment because of her inability to
19 stop smoking.
20 And one of the reasons her words were so
21 strong was because, as the evidence will show here, both
22 her daughter and her son-in-law wouldn't allow her to
23 smoke in the house, didn't want to be around smoke, they
24 both hated smoke, and they were both always telling her,
25 "It's a disgusting, filthy habit. Stop."
26 And she walked into this doctor and she
27 said those things, that she was disgusted with herself.
28 She expressed embarrassment and remorse at her inability

986

1 to stop smoking. She had been diagnosed with
2 bronchitis, chronic bronchitis, on lots of occasions;
3 and he said, as you will hear from him, from her, him
4 and/or her, "You know, don't be so down on yourself.
5 You picked up this incredibly addictive habit before
6 anyone knew there was anything wrong with the stuff, any
7 of the customers knew, and you have tried and you have
8 tried, and don't be so down on yourself about it." So

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9 this was 1998.
10 Ms. Bullock has tried to stop smoking on
11 too many occasions; and I believe that Ms. Bullock still
12 smokes somewhat; and as I have already explained in
13 earlier proceedings here, Ms. Bullock is a confirmed,
14 addicted smoker.
15 Philip Morris hired two different people
16 to examine her, and they concluded she is an addicted
17 smoker. Neal Benowitz, who is probably, as I said, the
18 number one expert on nicotine addiction in the world,
19 has looked through her records and talked to her and
20 believes she is an addicted smoker; certainly, Dr. Rodas
21 does.
22 At the time that she was expressing her
23 remorse and guilt and shame at her inability to stop
24 smoking to Dr. Rodas, probably the tumor, which was
25 later diagnosed, was already very, very well underway;
26 and it probably wouldn't have mattered at that time
27 whether she stopped or didn't stop.
28 You will hear here that her lung cancer

987

1 is caused by cigarette smoking. You will hear here that
2 her lung cancer is caused by smoking Marlboro
3 cigarettes, from scientists and doctors; Benson & Hedges
4 cigarettes, Philip Morris' cigarettes.
5 You will hear here that, I don't know,
6 maybe she won't be around for a year; maybe she won't be
7 around to the end of the year. I don't know. She has
8 outlived some predictions already, and Ms. Bullock is
9 kind of a tough cookie.
10 So anyway, after -- I should add this. I
11 am not going to take all the way until 12:00 o'clock.
12 Ms. Bullock likes to be, prides herself
13 upon being as self-sufficient as possible. When her
14 marriage to Mr. Bullock ended, she got into the health
15 care business. She became a CNA, which is called a
16 certified nursing assistant; not a nurse, not a
17 registered nurse, not a licensed vocational nurse, but a
18 certified nursing assistant.
19 And her job over the course of a long time
20 was to work, I think, through registries and go to
21 people's homes and take care of them; and she spent long
22 years taking care of other people.
23 This includes some of her family members
24 who have been very sick. The evidence will show that
25 she took care of, while she was very sick, some of her
26 sisters or at least one of her sisters who might have
27 been sicker. The evidence will also show that she's got
28 one other sister as addicted as her who continues to

988

1 smoke despite Ms. Bullock's illness.
2 She lived by herself until fairly
3 recently. She lived down in [DELETE]; but as
4 she's gotten sicker and as she has needed more
5 treatment, she sort of splits her time between her own
6 place and her daughter and son-in-law's place, and they
7 live up in [DELETE]. She gets her treatment at
8 Hoag Hospital, and that's real close to Hoag Hospital,
9 and so she stays there more.
10 And I think you'll hear that despite the
11 fact that now that she's real sick and she knows it's a
12 fatal disease and she is living with two people who
13 absolutely hate smoking, whether she's sick or not, she

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14 will still sneak them today.
15 Here's just a brief show of what the
16 medical evidence will be here.
17 Her treating doctor is a man named
18 Vandermolen; and Dr. Vandermolen is an oncologist --
19 that's a cancer specialist -- down in Orange County; and
20 you are also going to be hearing, as it deals with
21 pathology, from a Dr. Samuel Hammar. And Dr. Hammar, I
22 am proud to say, has agreed to testify for us. He is
23 one of the world's leading experts on chest cancer, lung
24 cancer. Internationally recognized.
25 There will be no question in this case, I
26 don't believe, that this lung cancer was caused by
27 tobacco. That's what the tumor looked like when it was
28 first seen; and this particular kind of lung cancer is

989

1 called small cell. I believe the evidence will show
2 that small cell cancer is probably caused virtually
3 every single time by tobacco. There probably isn't a
4 real recognized second choice at all; and if it's small
5 cell cancer, it's tobacco that does it.
6 So anyway, February 2001. It's this
7 thing. Right here. That's what the therapy did to it,
8 shrunk it way, way down. So although I didn't look at
9 the number, I just held it up for everyone else to see
10 and maybe you all know it better than me, I think it was
11 about 11 centimeters. It shrank all the way down to 3
12 centimeters.
13 Because it was so big when they first saw
14 it, the doctors first saw it, that means it had been
15 growing there for a long time.
16 So that looked pretty good; and on the
17 same day, the doctors took a look at her liver; and then
18 a couple of months later, took another look at the
19 liver, and unfortunately, the cancer had spread to her
20 liver, and that's what's called metastasis; and there is
21 really nothing that can be done about it.
22 As I say, there is no cure for this. Once
23 it gets going, it can be slowed but not stopped; and so
24 Ms. Bullock has cancer in her chest and also her
25 lungs -- excuse me. I have been talking too long and I
26 apologize -- also her liver.
27 She is still getting treatment. She is
28 still getting treatment from Dr. Vandermolen.

990

1 Now, I am going to put on a little
2 evidence about her money damages. Ms. Bullock had
3 decided pretty much to semiretire or mostly retire. She
4 was eligible for Social Security. She had been working
5 hard, she contributed to it, and in order to remain
6 eligible for Social Security, I think the cutoff is
7 10,000 bucks a year.
8 So she was working as an L -- excuse me --
9 you caught me -- certified nursing assistant for up to
10 $10,000 a year; and then when she got to the $10,000 a
11 year, she would stop; and that's what she was planning
12 on doing.
13 She wasn't planning on being a
14 millionaire. She wasn't even planning on being a
15 $30,000-a-year-aire. She was planning on collecting her
16 Social Security and making the $10,000 a year working
17 that the government allowed her to do, because she
18 enjoyed her work and she enjoyed taking care of people.

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19 Obviously, she can't work anymore.
20 We are also going to put on evidence in
21 the case about the medical expenses; and I don't think
22 there will be much dispute about that. All of the
23 treatments she got were from really good doctors and
24 really good treatment and because she has outlived her
25 expectancy, it's working. So I don't think there will
26 be any question about that.
27 We are going to talk, of course, about
28 what it's like to lose 20 years of life and talking

991

1 about what the proper compensation is for that; and then
2 I've got news that probably -- I know you haven't heard
3 before. This trial has potentially two parts; and the
4 first part is finding responsibility and finding
5 damages.
6 And in the first part you, the jury, will
7 be asked to decide whether Philip Morris' conduct was
8 fraudulent or oppressive or in conscious disregard of
9 the rights of others; and the judge will instruct you on
10 all this and you will have the law and you will have
11 heard all the evidence.
12 I'd state for a second that the
13 plaintiff's evidence is going to be that as a -- as now
14 the largest member of this conspiracy, 50 percent of the
15 market, Philip Morris is as big as all the others put
16 together; but even when it was a smaller player, as part
17 of this conspiracy, Philip Morris alone and in concert
18 with the other tobacco industries, through the TIRC and
19 the CTR and the TI and all of their organizations,
20 engaged in what I believe the evidence will show is the
21 largest fraud scheme that's ever, ever been perpetrated
22 by corporations anywhere; and the results of it aren't
23 measured in lost pension dollars. They are measured in
24 millions of lives.
25 So if the jury finds that there has been
26 fraud or if the jury finds that there has been
27 oppression -- legal word "oppression" -- malice,
28 conscious disregard for the rights of others -- I'd stop

992

1 there for a second. You may hear that -- well, one
2 thing I know you will hear, Philip Morris never tested a
3 Marlboro cigarette to see if it caused cancer until
4 1999; and once they started testing Marlboro cigarettes
5 on human beings to see if they caused cancer, in order
6 to do an ethical test, Philip Morris had to get these
7 human beings who were smoking the cigarettes to sign
8 waivers saying, "I realize I'm part of an experiment"
9 and get all this stuff written up.
10 So what you're going to hear, I believe,
11 is that before 1999 Philip Morris alone and as part of
12 the tobacco industry conspiracy conducted the largest
13 animal study of toxins and carcinogens in the history of
14 the world and for animals they used their customers;
15 and now when they come out of the dark and make their
16 admissions and do the research, they get the same people
17 to sign waivers in advance.
18 Anyway, if the jury finds that there is
19 malice or oppression or conscious disregard, there will
20 be a second phase to the trial; and this is a civil
21 case. This isn't a criminal case. In a civil case, no
22 one is going to go to jail here; but the second part of
23 the trial is sort of analogous to a penalty phase in a

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criminal trial; and it's to assess the appropriate punishment or to assess the appropriate means of making an example of Philip Morris, and it's through money.

The second phase of the trial will be way shorter than the first phase, way shorter; and in the

993

second phase of the trial, we will be talking about how best using this forum here, to use this case as an example to any other corporation that might even dream for a second about pulling this kind of thing again.

Thank you.

THE COURT: Ladies and gentlemen, I am going to have you take your noon recess at this time. I would admonish you not to discuss this case amongst yourselves or with anyone else. Do not form or express any opinion on the matter until it is finally submitted to you.

When you return at noon and from now on --

What time will the doors be open for jurors?

THE COURT LIAISON: I will have them open at 1:20.

THE COURT: At 1:20 they will be open. You're not due here until 1:30. You may come in at that hour and go directly into the jury room, where I think you will find it easier to just kind of stretch out instead of sitting around in the hallway; and we will see you back here and begin our second phase of opening statements at 1:30.

I would request everyone remain seated until the jury has left the courtroom. You are excused for your noon recess.

(A pause in the proceedings.)

(The following proceedings were held

994

in open court outside the presence of the jury:)

THE COURT: The record will reflect that the jury has left the courtroom.

I want to express my appreciation to those of you in the audience for having adhered to our admonition; and, of course, you are always welcome as long as there are seats available for you. Have a pleasant an lunch. I will see you at 1:30.

MR. LEITER: Your Honor, one moment before we adjourn. We have four objections to put on the record. They go to motions in limine that your Honor has denied, but we would like to record the objections on the record. It will take about two minutes. We can either do it now or at the end of the lunch hour, as you wish.

THE COURT: I suppose we can do it at the end of the lunch hour. That will be fine.

MR. LEITER: Okay. Thank you.

(The noon recess was taken until 1:30 p.m. of the same day.)

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Los Angeles, California August 20, 2002
Case Number: BC249171
Case Name: Bullock vs. Philip Morris
Department 19 Hon. Warren L. Ettinger, Judge
Reporter: Ruanne McArthur, CRR, CSR #2699
Time: 1:30 p.m. Session
Appearances: (As heretofore noted.)
-oOo-

(The following proceedings were held in open court within the presence of the jury:)

THE COURT: The record will reflect that the jury is present. All counsel are present.

Mr. Bleakley, you will begin your opening statement.

MR. BLEAKLEY: Thank you, your Honor.

* OPENING STATEMENT

BY MR. BLEAKLEY

Good afternoon, everyone.

(All respond.)

MR. BLEAKLEY: Just a reminder, my name is Peter Bleakley, and together with my partner Maury Leiter, I represent the defendant Philip Morris in this case.

Is this particular plaintiff, this particular long-time cigarette smoker, entitled to

recover substantial money damages? That's what this case is all about. That's what we are here for. That's why we went through what I am sure seemed to many of you to be an extraordinarily long jury-selection process trying to find a group of people who could sit and listen fairly and impartially to the evidence about whether this particular smoker is entitled to recover.

To listen to the evidence about why she smoked, why she took up smoking, why she didn't quit, what are the reasons for her smoking, that's why we are here.

Is this smoker, out of all of the millions and millions of Americans who have been smokers over the last 50 or so years, entitled in this case to recover?

I said this to you when we were having the little mini openings during the jury selection process and I will say it again here: People are different. Smokers are different from one another too. People take up smoking for different reasons. They don't stop for different reasons. They do stop for different reasons.

And the evidence that you are going to see and hear in this courtroom over the next few weeks is going to demonstrate that this particular cigarette smoker smoked because she enjoyed it and she kept smoking because she enjoyed it; and when people, including her doctors, told her that she should quit, this is what she said: "I am an adult. This is my business."

Those are her words, ladies and gentlemen, not mine; and you are going to see them again and again and again. Mrs. Bullock thought she was an adult, and her decision to smoke was hers to make or not make.

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5 That's what she thought, and that's why she is not
6 entitled to recover in this case.
7 Now, I say all of this recognizing and
8 understanding that cigarettes, cigarette companies,
9 cigarette smokers, are not very popular these days. Not
10 all that long ago, as counsel for Mrs. Bullock pointed
11 out in his opening statement, cigarette smoking was a
12 basic part of American culture. Not everybody did it.
13 Lots of people didn't.
14 But it was a basic part of American
15 culture. Actors smoked, athletes smoked, singers,
16 songwriters, business leaders, political leaders, the
17 President of the United States, Dwight D. Eisenhower,
18 was a smoker for many, many years. He quit. He was a
19 heavy smoker. He quit.
20 People smoked in those days, and companies
21 like Philip Morris, including Philip Morris, were
22 respected members of the American corporate community.
23 Not so anymore. Today we don't allow
24 smoking in most public places, especially here in
25 California. Most people don't allow smoking in their
26 homes or in their cars. Many people, some of you,
27 probably think that cigarette sales and manufacture
28 should be outlawed, shouldn't be allowed. Others of you

998

1 think at the very least, advertising should be
2 prohibited.
3 Cigarette smoking has become socially
4 unacceptable in this country, and famous people, if they
5 smoke today, they don't do it in public.
6 Cigarette companies are not highly
7 regarded anymore. We know that. I know that. Philip
8 Morris knows that. At the very least, most people think
9 that the cigarette companies have been stubborn and
10 foolish not to have admitted long ago that cigarette
11 smoking was both dangerous and addictive, and others
12 think that the cigarette companies have lied and covered
13 up all these years.
14 And ladies and gentlemen, as we begin this
15 trial, let me make clear to you that there is no
16 question that Philip Morris has made many mistakes over
17 the years in dealing with the smoking and health issue.
18 No question about it. You heard a lot about it this
19 morning. You are going to hear a lot about it during
20 the first part of this trial.
21 Plaintiff is going to bring before you
22 witness after witness after witness to tell you how
23 badly they believe that Philip Morris and the other
24 cigarette companies have behaved over the last 40 or 50
25 years.
26 Now, Mr. Leiter and I could spend hours
27 and hours and hours cross-examining these witnesses in
28 an effort to counter just some of the things that they

999

1 say, and we could bring in a whole long laundry list of
2 witnesses of our own to try to rebut some of the things
3 that Philip Morris and the other cigarette companies are
4 accused of doing, and we would be here until
5 Thanksgiving.
6 I am not going to do that, Mr. Leiter
7 isn't going to do that. With one exception that I will
8 tell you about a little bit later this afternoon, we are
9 not going to do that in this case.

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10 We are not going to stand in this
11 courtroom over the next several weeks and spend time
12 every day trying to persuade you that everything that
13 Philip Morris did and said over the last 50 years was
14 right. We are not going to do it because even if we
15 could convince you, even if we could convince you of
16 some of it, it would be a distraction from the issue for
17 which you were selected to come here and serve, which is
18 to determine, to decide whether this particular
19 cigarette smoker, out of all the millions of people who
20 have been cigarette smokers, whether this particular one
21 is entitled to recover in this case.
22 Now, let me stop here for just a second,
23 because I want to talk for a minute about what you all
24 heard over and over and over again during the jury
25 selection process; two-way street, personal
26 responsibility, do you believe that corporations have
27 personal responsibilities as well as individuals.
28 And, of course, the answer to that

1000

1 question is that corporations have personal
2 responsibilities; but in a sense this is a little bit of
3 a red herring. Remember, today in 2002, right now, the
4 manufacture and sale of cigarettes in this country, in
5 this state, in this county is legal.
6 I know that some of you think or at least
7 wish it weren't. You think it shouldn't be or wish it
8 weren't; but the fact of the matter is, it is a legal
9 product. It's sold legally, and our government and
10 public health officials have decided that it is not the
11 way to deal with the smoking and health problem in this
12 country, to ban the sale of cigarettes; and that is not
13 an issue in this case.
14 The issue in this case is not whether
15 Philip Morris should or should not be making and selling
16 cigarettes. It is whether some wrongful conduct by
17 Philip Morris, not the manufacture and sale, but some
18 wrongful conduct by Philip Morris is what caused
19 Mrs. Bullock's injuries, is what caused her to take up
20 or continue smoking.
21 Specifically, as counsel for Mrs. Bullock
22 pointed out this morning, the allegation in this case is
23 one of fraud; false and misleading advertisment. The
24 allegation is that Mrs. Bullock was led to believe that
25 cigarette smoking wasn't dangerous or wasn't as
26 dangerous as she otherwise might have thought it would
27 be.
28 And that's the issue that you are here to

1001

1 decide in this case; and that, to repeat myself, is the
2 reason why we spent so much time trying to make sure
3 that when we ended up with 16 people, we ended up with
4 16 people who had no fixed view on that issue.
5 You promised that you would sit here in
6 this courtroom and listen to the evidence about
7 Mrs. Bullock and why she smoked and render your decision
8 based upon that evidence; and that's going to be the
9 focus of the defense evidence that we put on during the
10 course of this case. Maybe we can get you out of here
11 in less than 40 days.
12 Now, what the evidence is going to show is
13 that Mrs. Bullock, this particular cigarette smoker,
14 smoked knowing that it was dangerous, knowing that it

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15 could cause serious and even fatal disease, knowing that
16 for 30 years it was actually damaging her health as she
17 did it.
18 Now, how are we going to prove all this?
19 We, as the Court pointed out to you during the jury
20 selection process, we don't have to prove anything. We
21 are the defendant. Mrs. Bullock is the plaintiff. She
22 has the burden of proving in this case by a
23 preponderance of the evidence that she is entitled to
24 recover. She has the burden of proving that wrongful
25 conduct by Philip Morris, not the manufacture and sale
26 of cigarettes, but wrongful conduct caused her to take
27 up or continue smoking.
28 Now, I am going to outline for you in some

1002

1 detail that the evidence that you are going to see and
2 hear about Mrs. Bullock during the course of this case,
3 and I am going to tell you right up front that we
4 believe that the evidence that you are going to hear
5 about why Mrs. Bullock smoked is very different from
6 what you heard this morning; very, very different.
7 But first I want to talk to you for just a
8 minute about cigarette smoking and why people do it;
9 because a lot of you have never been cigarette smokers
10 or if you were, you only smoked a few when you were
11 younger, or you think that cigarette smoking is done
12 just for nicotine.
13 And nicotine is an important part of
14 smoking. There's no question about it. Nicotine is an
15 important part of smoking not just because it's habit
16 forming, because it's addictive. It's also part of the
17 taste and the feel of cigarette smoking. It's an
18 important element of cigarette smoking, but it is not
19 the only reason that people smoke.
20 People smoke because they enjoy it.
21 Think about this as you listen to the
22 evidence in this case. Today, in 2002, hundreds of
23 thousands of adult Americans, not kids, adult Americans
24 take up smoking in this country every year. With all we
25 know about the dangers of cigarette smoking today and
26 all of the controls that there are over the manufacture
27 and the sale and marketing of cigarettes, hundreds of
28 thousands of people, adult people, take up smoking in

1003

1 this country every year.
2 Just think about it for a second. You are
3 going to hear all of this from the witnesses in the
4 case, including some of plaintiff's witnesses. We have
5 had a warning on every pack of cigarettes sold in the
6 United States since 1966, 36 years.
7 We have had this warning on cigarettes
8 since 1985, 17 years. Surgeon General's warning,
9 "Smoking causes lung cancer." No qualification, no
10 equivocation, no maybes -- "causes lung cancer." For 17
11 years in this country.
12 We have had, as counsel for Mrs. Bullock
13 pointed out to you this morning, no television
14 advertising of cigarettes in this country for 32 years,
15 since 1970. The laws against the sale of cigarettes to
16 minors, while they have been around for years, for
17 decades, have been significantly strengthened over
18 recent years.
19 The advertising of tar and nicotine

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content of cigarettes has been regulated by the Federal Trade Commission in Washington for as long as anybody can remember.

Today, in addition to that, we have controls over where cigarette advertising can be done. There is no -- virtually no outdoor advertising anymore. Did you know that? For cigarettes, there is virtually no outdoor advertising of cigarettes.

No billboards. No advertising on buses or

1004

taxis or at bus stops or at taxi cab stands. No merchandise sold with cigarette logos or brand names on them. No promotions or support of athletic events, concerts, or other outside activities at which a substantial part of the audience is minors.

This amount of control has increased steadily over the last few years. Our knowledge of the dangers of smoking as grown as well; and yet today in 2002, hundreds of thousands of people, adult people, take up smoking in this country every year and continue smoking and they do it because they enjoy it. They do it knowing that it's risky.

We take risks. We are all different. Some of us are willing to take risks that others aren't. Look at obesity. I'm sure that many of you have read in newspapers in the last few weeks that obesity has been declared by the Surgeon General to be the second leading cause of premature death in the United States.

Grossly overweight. Do you think there's anybody who doesn't know that it is bad for them to be grossly overweight? But some people do it anyway because they enjoy it.

Cigarette smoking is very similar to that. I'm not defending smoking, ladies and gentlemen. Smoking is dangerous, and most of us wisely choose not to do it; but the fact of the matter is, people do things that are dangerous because they enjoy them.

1005

Mrs. Bullock enjoyed smoking. She said so in her deposition. I'm sure those of you who have been involved in litigation, either as jurors or as parties or even as witnesses, know that one of the things that happens in cases like this is that the parties take sworn depositions of witnesses and parties to litigation before the trial -- the case goes to trial.

Well, we took Mrs. Bullock's deposition in this case. She was sworn, she was under oath, she answered questions that we put to her. You will see a lot of that testimony during the course of this trial.

Well, one of the questions that she was asked was about her enjoyment of smoking. And this is what she said:

"Q. What was it you it you enjoyed about smoking?

"A. Well if I felt nervous and I smoke a cigarette, it did seem to relax.

"Q. Smoking relaxed you?

"A. Yes.

"Q. Can you describe for me the feeling that you are referring to?

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"A. Well, I would crave a cigarette. I was working on payrolls. I had to keep a clear head. And as soon as I smoked a

1006

cigarette, it seemed I could think more clearly.

"Q. Did you enjoy the taste?

"A. Yes."

She testified during the same deposition that she enjoyed the taste of Benson & Hedges most of all.

People smoke for different reasons. They smoke for nicotine. They smoke for taste. They smoke for feel. They smoke because it helps them think more clearly and to feel relaxed. They smoke to have something in their hands. They smoke to be sociable. They are all different; and the issue that you have to decide in this case is: Which one of these was Mrs. Bullock? That's the issue. That's the ultimate issue you are going to have to decide when you go into the jury room at the end of this case.

And what I'm telling you is that the evidence is going to show that she was one of those people who enjoyed it. She was one of those people who knew that it was risky, and she decided to smoke anyway because she was an adult and it was her business.

Okay. Let's review the evidence that you are going to see and hear about. Up there on the screen, this is a summary of the facts that you are going to hear about in this case. You already heard this one. Mrs. Bullock smoked her first cigarette in

1007

1956 at the age of 17. She was a senior in high school back in South Dakota. Was she a minor? Yes. Was she 12 years old? No.

She did not become a routine smoker, a real smoker -- to use again words that Mrs. Bullock used -- until the mid 1960s when she was in her mid 20s.

By then, by the mid 1960s, there were warnings on every pack of cigarettes sold in the United States, every pack of cigarettes that Mrs. Bullock saw and smoked, and she acknowledges that she knew about this. She knew about the warning. She knew that the Surgeon General of the United States had said that cigarette smoking was dangerous.

Mrs. Bullock began suffering from chronic bronchitis from smoking, not in the 1980s, but by the 1970s at least, and you will see her testimony in which she says, maybe even by the late 1960s; and her doctor was telling her to quit then. She was still in her 20s.

Her daughter began nagging her to stop smoking beginning in the 1970s for health reasons, not just because she thought it was stinky. Her response was "I am an adult. This is my business." Mrs. Bullock was still only in her 30s.

As her chronic bronchitis and COPD, chronic obstructive pulmonary disease, the next stage of lung disease, worsened, in the 1970s, 1980s, and 1990s,

1008

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1 Mrs. Bullock's doctors repeatedly told her to stop
2 smoking. The evidence that you are going to see and
3 hear will demonstrate that Mrs. Bullock did not make any
4 serious attempts to quit smoking before the mid-1990s.
5 If she had, she could have quit, and I
6 will talk about that in a few minutes; and most
7 importantly, if she had stopped smoking in 1960 when she
8 was pregnant or 1966 or even in the 1970s or 1980s, she
9 would not have lung cancer today.
10 That's a summary of the facts.
11 Now, let's talk in a little bit more
12 detail about what the facts are going to show. After I
13 take a drink of water.
14 Okay. The first cigarette back in 1956,
15 17 years old, a senior in high school. Her father
16 worked for the local radio station. Most of
17 Mrs. Bullock's family and friends were not smokers.
18 That first cigarette that she had in 1956, she sneaked
19 it behind the garage. She felt guilty about it, even
20 that very first cigarette back in 1956. She didn't like
21 it, and she did not become a smoker.
22 She did not start smoking in the sense
23 that most of us think starting smoking back when she was
24 in South Dakota in 1956.
25 Now, there was a lot of publicity about
26 smoking and lung cancer even in the 1950s. There aren't
27 many of you old enough to remember, but there was, and
28 you will hear about it during this case. Lots of it.

1009

1 The scientific studies that Mr. Piuze
2 talked about during his opening statement this morning,
3 those scientific studies were widely publicized in
4 newspapers, on radio stations. Television was really
5 just getting started in those days, but such as it was,
6 there were television programs about smoking.
7 The fact of the matter is cigarettes had
8 been referred to even before this as -- some of you will
9 remember this -- cancer sticks, coffin nails, little
10 white slavers, long before the Fifties. Cigarettes were
11 controversial even in the 1950s. The link or the
12 potential link between cigarette smoking and lung cancer
13 was being disseminated, was being in the press, in
14 newspapers, television, radio, all the time.
15 It wasn't just profits that dipped after
16 all of these studies came out, ladies and gentlemen.
17 The reason why profits dipped is because sales dipped.
18 Sales dipped because a lot of people stopped smoking
19 back in the 1950s because of their concern about
20 cigarette smoking and lung cancer.
21 That cigarette smoking was risky was known
22 even back in the 1950s.
23 Now, Mrs. Bullock testified in her
24 deposition that she recalls nothing about health risks
25 of smoking in the 1950s; nothing from Philip Morris,
26 nothing from the public health community. That may be,
27 but she did sneak that first cigarette behind the garage
28 and she felt guilty about it.

1010

1 It is absolutely true that cigarette ads
2 in the 1950s had film stars and political leaders and
3 athletes and the like in them; and it is also certainly
4 true that nearly 50 percent of the adult population of
5 the United States were cigarette smokers; but you know,

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6 50 percent weren't. 50 percent of the population didn't
7 take up smoking even back in the 1950s. It was
8 controversial even then.
9 Now, after Mrs. Bullock graduated from
10 high school and set out for Southern California, she
11 decided that she was a big girl and she could make her
12 own decisions about life, and she started experimenting
13 with cigarettes.
14 But what the evidence is going to show
15 about her smoking between that time and about the
16 middle 1960s, we believe, is different from that which
17 was described for you this morning by counsel for
18 Mrs. Bullock.
19 In this deposition that I was telling you
20 about, Mrs. Bullock testified that she was playing
21 around with smoking during that period of time; that she
22 wasn't a real smoker until the middle 1960s; and those
23 medical records that are all wrong about her starting at
24 the age of 28, those are medical records for the doctors
25 who treated Mrs. Bullock for her cancer last year, 2001.
26 They wrote down on their medical records -- and where do
27 you think they got that information that she started
28 smoking at the age of 28? That would be 1967 or

1011

1 thereabouts. Not 1958, 1959, 1960.
2 She was confronted with those medical
3 records in her deposition and says the reason she said
4 that was because she didn't think of herself as a real
5 smoker until then; and the reason why this is important,
6 ladies and gentlemen, assuming for the moment that I am
7 right, assuming for the moment that the evidence is
8 going to show that Mrs. Bullock did not become a real
9 smoker or a routine smoker until 1966 or '67, is that by
10 then the knowledge that cigarette smoking was dangerous
11 had been widely publicized.
12 The Surgeon General's report had been
13 issued. A California Department of Public Health report
14 that I'll tell you about a little later this afternoon
15 had been issued. A huge public health campaign against
16 smoking had begun. All that when Mrs. Bullock became a
17 real smoker in 1966 or 1967.
18 The 1964 Surgeon General's report, we
19 asked Mrs. Bullock if she knew about it. This is what
20 she said. Everybody see that? "It concerned me a bit,
21 but I kept on smoking."
22 The reason why it is important that she
23 didn't become a real smoker is that when she did make
24 that decision to become a real smoker, she knew that
25 smoking was dangerous.
26 Now, as counsel told you this morning, in
27 1960 Mrs. Bullock got married and she quit smoking.
28 That's also important because plaintiff and counsel

1012

1 would like you to believe that Mrs. Bullock was addicted
2 already. She quit when she was pregnant for whatever
3 reason. The fact of the matter is, she stopped
4 smoking. She went back to it after her pregnancy. Her
5 husband did not like smoking and she hid it from him.
6 She also testified in this same deposition
7 that I was telling you about that she cut back on her
8 smoking around her husband too. She was still very much
9 in control of her smoking and how much of it there was.
10 In 1963 Mrs. Bullock got divorced, got her

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11 daughter, and moved back out to Southern California. In
12 1963 the California Department of Health issued a
13 report, actually before the Surgeon General's report,
14 describing all of the things that cigarette smoking can
15 do to your health and calling upon the people of
16 California to stop.
17 It too, you will learn, was widely
18 publicized in 1963 when Mrs. Bullock was in her 20s and
19 when Mrs. Bullock was still playing around with
20 smoking.
21 In 1966 she married Mr. Bullock. By then
22 the Surgeon General's report was two years old,
23 California Department of Health record was three years
24 old, and a public health campaign, the likes of which
25 had never been seen before, against smoking had gotten
26 underway.
27 And it was about then when she met
28 Mr. Bullock and he was a Benson & Hedges smoker, that

1013

1 she took up the smoking of Benson & Hedges 100s and
2 smoked them steadily. According to counsel, she is
3 still smoking. 30 some years.
4 I want to stop for a second and talk with
5 you a little bit about this public health campaign,
6 because some of you who are young may be under the
7 impression that the anti-smoking campaign in this
8 country is something of recent vintage, and you may be
9 under the impression that it didn't have to do with lung
10 cancer. Not so.
11 The public health campaign against smoking
12 in this country -- although there was some around even
13 before 1964 -- got started almost immediately after the
14 issuance of the Surgeon General's report in 1964; and I
15 think you will hear experts, including experts for the
16 plaintiff in this case, acknowledge that that public
17 health campaign had never seen anything like it before
18 and there hasn't been anything like it since. It was
19 enormous.
20 And it got going when Mrs. Bullock was
21 still playing around with smoking.
22 Within weeks of the issuance of the 1964
23 Surgeon General's report, you will learn during the
24 trial of this case, that public health organizations
25 across the country mobilized almost immediately. At the
26 federal level, it was coordinated by something called
27 the National Interagency Clearinghouse on Smoking and
28 Health, which included agencies from every state in the

1014

1 United States. It included the Surgeon General, United
2 States Health Service, the National Cancer Institute --
3 NIH -- National Cancer Institute being part of the
4 National Institute of Health -- and state and local
5 agencies across the country.
6 It also included voluntary organizations
7 like the American Heart Association and, of course, the
8 American Cancer Society, which we all know about.
9 You are going to hear about it from
10 witnesses, more than one, in this case. At the moment I
11 am going to tell you only about some of the things done
12 by just one of those agencies at the federal level and
13 that is the American Cancer Society.
14 One of the things that all of these
15 agencies at the state, local, and federal level decided

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is they wanted the word to get out immediately about the conclusions of the Surgeon General's report, and they did just that. They distributed hundreds of thousands of copies of that report immediately.

But they did a whole lot more than that, ladies and gentlemen, these early years. In the first year, the Surgeon General's report came out in January of 1964. During that year the American Cancer Society distributed 17 million leaflets and 53,000 film strips describing the findings of the Surgeon General's report and telling people about the dangers of smoking.

In 1966 they distributed 1.48 million comic books to the children of this country and over

1015

2 million leaflets, again describing the findings of the Surgeon General and urging people not to smoke.

In 1967 over 80 percent of the radio stations in the United States picked up one of the programs that the American Cancer Society sponsored to get people to stop smoking and not to start smoking.

Since 1967, 35 years ago, those years, '66, '67, that's just about the time that Mrs. Bullock married her second husband, Mr. Bullock, and became a real smoker of Benson & Hedges.

In 1968 we had a program that was played on 3,000 radio stations across the country. In 1970 -- by 1970 they had developed 27 different anti-smoking TV commercials. This isn't just recently that anti-smoking TV commercials have been done. This was being done 30-odd years ago when Mrs. Bullock was still in her late 20s, early 30s.

In 1972 they sent a copy of a Reader's Digest article on smoking to every single secondary student in the United States. Who was in secondary school in 1970 or in the early 1970s? Mrs. Bullock's daughter that you heard about this morning.

Reader's Digest was, in fact, as counsel told you this morning, one of the leading anti-smoking journals. Reader's Digest also happened to be during this time the most popular magazine in the United States, more widely read than any other. Mrs. Bullock was a reader of Reader's Digest.

1016

In 1977 the California chapter of the American Cancer Society sponsored the first great American smoke-out. That was started here by the California chapter. In the first year, 5 million smokers participated. Everybody agreed not to smoke a cigarette for one day. 5 million people participated in it. By 1981, one-third of all the smokers in the country participated in the great American smoke-out. By 1986, 24 million American smokers participated in the great American smoke-out.

This is just the American Cancer Society and to some extent the California chapter at the federal level.

Let's talk a little bit about what was done in California, because I'm sure you know, many of you know, California has been for years in the forefront of the anti-smoking campaign in this country.

First we will start with the 1963 California Department of Health report that I told you about a few moments ago. This is just about the time

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21 that Mrs. Bullock was moving back to Southern California
22 from South Dakota. I can't tell you that this came out
23 and that she saw it. I am not suggesting that to you.
24 But what I am telling you is that in 1963,
25 before the U.S. Surgeon General, the California
26 Department of Health reported that the evidence now
27 indicates that cigarette smoking has such a profoundly
28 harmful effect on health that it should be abandoned.

1017

1 The state faces a serious problem in cigarette smoking;
2 namely, a severe hazard to health.
3 This was widely publicized in 1963.
4 California was among the first states to
5 adopt non-smoking ordinances. The original ordinances
6 did not prohibit smoking in all public places. That
7 grew over a period of time. The California Medical
8 Association very early on adopted a resolution calling
9 for everyone to stop smoking. Grass roots organizations
10 that some of you have heard about started here. There
11 is an organization called Group Against Smoking
12 Pollution, GASP. I am sure some of you have heard of
13 it. GASP was started here in California.
14 What ultimately became known as the
15 Americans for Non-smoking Rights started in California
16 as the Californians for Non-smoking Rights; and it led
17 the nation in the number and the extent of the
18 ordinances against smoking that were adopted over the
19 years following.
20 Now, what effect did this have? A
21 dramatic effect. In 1957, nearly 50 percent of the
22 adults in the United States were smokers. At one point
23 in time, the average in California was higher than on
24 the nation as a whole. In other words, there were more
25 adult Californians smoking than there were elsewhere in
26 the country.
27 That changed pretty darn quickly and has
28 dramatically declined. The number of smokers nationwide

1018

1 has declined from about 50 percent to something less
2 than 25 percent, by half. In California it's declined
3 to about 17 percent; and as counsel for Mrs. Bullock
4 pointed out to you this morning, today there is only one
5 state in the country that has a lower smoking rate than
6 California and that's Utah.
7 But that only tells part of the story.
8 Californians are not only smoking -- fewer Californians
9 are smoking today than elsewhere in the United States.
10 They are smoking less. They are smoking fewer
11 cigarettes. The average number of cigarettes smoked by
12 Californian smokers is only half of the number of
13 cigarettes smoked by Americans at large.
14 California was in the forefront of states
15 in the anti-smoking campaign. [DELETE], where
16 Mrs. Bullock has lived for a long, long time now, was in
17 the forefront for California. It passed the first
18 anti-smoking ordinance in the state. It was the first
19 county to have one that prohibited all smoking in public
20 places. San Juan Capistrano and Newport Beach were the
21 first towns -- and those are towns that Mrs. Bullock has
22 lived in -- were the first towns in the county to pass
23 anti-smoking ordinances.
24 In the 1980s, there is virtually nowhere
25 in Orange County that Mrs. Bullock could have gone where

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26 she would not have been confronted with no smoking
27 signs.
28 And the result -- that little orange line

1019

1 is Orange County. We don't have it going back to the
2 1950s. The U.S., about 23 percent of adult Americans
3 are cigarette smokers today. About 17 percent of
4 Californians are cigarette smokers today and they are
5 smoking fewer cigarettes. Less than 15 percent of the
6 residents of [DELETE], where Mrs. Bullock has lived
7 for a long, long time, are cigarette smokers today.
8 This anti-smoking campaign has been a
9 success by any standard. You will hear witnesses in the
10 case, including plaintiff's witnesses, agree with a
11 statement made by the Surgeon General of the United
12 States in 1989, in his 1989 report, which is that the
13 anti-smoking campaign in this country has been a huge
14 success.
15 And while I may be paraphrasing it
16 slightly, what he said in 1989 and the evidence would
17 seem to support it is that the ashtray is following the
18 spittoon into oblivion.
19 Now, Mrs. Bullock knew about the Surgeon
20 General's report, she knew about this public health
21 campaign, but it wasn't just publicity and ordinances
22 regulating smoking that Mrs. Bullock knew about. She
23 was, as I told you and as Mr. Piuze told you this
24 morning, also being nagged constantly by her daughter to
25 stop smoking and by her doctors to stop smoking.
26 And it was for health reasons. Her
27 daughter was urging her to stop smoking for health
28 reasons.

1020

1 You will see her testimony -- you may see
2 her or her daughter come and testify in this case. I
3 don't know whether you will or not; but whether you do,
4 you will see deposition testimony from her daughter
5 where she talked about a science project that they had
6 in their class back when she was a junior high school
7 student in the 1970s in which they drew cigarette smoke
8 through cotton and showed them what Mrs. Bullock's
9 daughter called the yucky stuff that was deposited on
10 the cotton to show you what happens to your lungs when
11 you smoke; and she went home and told her mother about
12 that in the early 1970s and begged her to stop smoking.
13 Both Mrs. Bullock and her daughter have
14 testified that she never stopped nagging her about
15 quitting from the 1970s on, for health reasons, not just
16 because it was stinky or disgusting, but for her health.
17 Her response, "I am an adult. This is my
18 business."
19 Now, Mrs. Bullock began to have problems
20 with chronic bronchitis fairly early on after she became
21 a regular smoker. It's a little unclear from the
22 record. You will get to see the testimony and you can
23 decide for yourself; but Mrs. Bullock essentially
24 admitted that she started having trouble with chronic
25 bronchitis at least by the 1970s and maybe as early as
26 the late 1960s and that her doctors even back then told
27 her she should cut down or quit smoking.
28 I am going to suggest to you -- you will

1021

1 have to decide for yourselves when you have heard all of

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2 the evidence -- that it is inconceivable that her
3 doctors did not tell her that one of the things that
4 could happen to her if she smoked is that she could get
5 lung cancer, because that's what all the publicity was
6 about.
7 That's what the Surgeon General's report
8 was about. That's what the American Cancer Society was
9 telling people. That's what was being taught in the
10 schools; lung cancer. Her doctors were telling her to
11 stop smoking or cut down even back in those days.
12 Now, medical records. Unfortunately,
13 medical records don't exist going back 40 years or at
14 least if there are, they are awful hard to find. We did
15 what we call pretrial discovery in this case. Both
16 sides ask each other for relevant information about a
17 lawsuit, and one of the things that we asked for was
18 Mrs. Bullock's medical records. We wanted to see what
19 her doctors were telling her, what conditions she might
20 have.
21 Unfortunately, we didn't -- we weren't
22 able to get any medical records before the early 1980s,
23 which isn't bad. They went back some 20 years, but that
24 is the earliest we were able to get them for; and they
25 show many, many visits to doctors; many, many visits to
26 hospitals; many, many recommendations by doctors to stop
27 smoking.
28 Now, this morning counsel attempted to

1022

1 characterize these as incidental visits that
2 Mrs. Bullock was making for other conditions, and "Oh,
3 by the way, while you are here I should tell you you
4 shouldn't smoke anymore."
5 Well, you will have to judge again for
6 yourselves based on the evidence you hear; but we have
7 medical records showing, for example, that in 1986
8 Mrs. Bullock -- I think I will put this one over here
9 just for variety -- was treated at Hoag Memorial
10 Hospital in 1986 for chronic bronchitis. Her doctor
11 told her to decrease smoking.
12 This is a form -- I am sure some of you
13 have -- this was in the emergency room, by the way. The
14 emergency room for acute bronchitis. I am sure some of
15 you who have been in emergency room know that when they
16 tell you to do or not to do something, they make you
17 sign an acknowledgement that you were told that. That's
18 what this is. "I hereby acknowledge that I have
19 received these instructions," signed by Mrs. Bullock.
20 "Decrease smoking."
21 In 1988, two years later, Mrs. Bullock was
22 back at the Hoag Memorial Hospital emergency room twice
23 for chronic bronchitis and for chronic obstructive
24 pulmonary disease.
25 Let me just stop here on this chronic
26 obstructive pulmonary disease for a moment. There are
27 several different kinds. Chronic bronchitis is one of
28 them. The most serious one is emphysema. Emphysema,

1023

1 which is caused by smoking. I don't know. I can't tell
2 by these medical records whether Mrs. Bullock had
3 emphysema at that point in time; but what the doctors
4 were characterizing was that she had chronic obstructive
5 pulmonary disease; indeed, one of the doctors who
6 treated her was deposed in this case, Dr. Hook.

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7 This is 1988. The deposition wasn't in
8 1988. The deposition was last year; but he was asked to
9 read from his medical record of her visits to Hoag
10 Memorial Hospital in 1988; and he read and what it says
11 was: "49-year-old white female with a long history of
12 COPD. Takes medications for acute exacerbation. Smokes
13 two to three packs a day."
14 What was she told to do? She was told "No
15 smoking," signed by Mrs. Bullock.
16 A few days later -- a few days later, she
17 was back in the same emergency room again, and again
18 told "Stop smoking" in 1988.
19 In 1989, 1990 Mrs. Bullock was treated at
20 Century City Hospital in L.A. for pneumonia. She was
21 told "Stop smoking."
22 As a matter of fact, what she was told
23 when she was admitted to the hospital in 1990 -- what
24 did Mrs. Bullock tell the nurse about why she was being
25 hospitalized? This is the nursing assessment when she
26 went into the emergency room: "Patient's understanding
27 of reason for admission 'smoking too much.'"
28 When Mrs. Bullock was diagnosed with

1024

1 chronic bronchitis back in the late 1960s or early 1970s
2 and told to stop smoking, she didn't have lung cancer.
3 When she went to Hoag Memorial Hospital in 1986 and
4 1988, she didn't have lung cancer yet. In 1990 when she
5 went to Century City Hospital she didn't have lung
6 cancer yet. We don't know exactly when it started, but
7 we know she didn't have it then.
8 In 1996, Mrs. Bullock asked for an X-ray
9 because she had been smoking and doing a lot of
10 coughing, and she was treated by a Dr. Mason -- I'm
11 sorry. I forgot a very important exhibit.
12 This is a result of a lung function test
13 that Mrs. Bullock had in 1994. Lung age, 95. She was
14 told that she had the lungs of a 95 year old from
15 smoking.
16 These are excerpts from the deposition of
17 the physician who treated her in 1996. The doctor said
18 when asked:
19 "Q. You don't have any
20 specific recollection of actually
21 telling her this gives you lung
22 cancer, for example?
23 "A. I always said so.
24 Everybody who smokes, I scare
25 them to death. Yes, that's
26 true."
27 Now, what would have happened if
28 Mrs. Bullock had not started smoking again after she

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1 quit when she was pregnant in 1960? She wouldn't have
2 lung cancer. What would have happened had she not
3 become a regular smoker in 1966 or '67 when she married
4 her second husband and took up the smoking of Benson &
5 Hedges and when she knew about the Surgeon General's
6 report and unquestionably knew that it was dangerous?
7 She wouldn't have lung cancer today.
8 The doctors who will testify in this case
9 will tell you that if Mrs. Bullock had stopped smoking
10 even in the 1970s, virtually all of the excess risk of
11 lung cancer caused by smoking would have been

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12 eliminated.
13 The fact of the matter is that if she had
14 stopped in the early 1970s when her daughter was asking
15 her to stop, she wouldn't have lung cancer. If she had
16 stopped smoking when her doctors were telling her to
17 stop, she wouldn't have lung cancer.
18 Now, what is the plaintiff's answer to
19 this? Well, it's no surprise. It's addiction. She was
20 addicted and she couldn't stop.
21 I want to say several things about
22 addiction. The first of which is important, however,
23 and that is that nothing that Philip Morris ever said or
24 didn't say about addiction played any role whatsoever in
25 Mrs. Bullock's smoking decisions.
26 Let me repeat that. Nothing that Philip
27 Morris said or didn't say about addiction played any
28 role in Mrs. Bullock's smoking decisions. It doesn't

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1 have anything to do with this case. Mrs. Bullock
2 believed that she was addicted. She testified in this
3 same deposition that she believed she was addicted back
4 in the 1960s.
5 There is no evidence and you will see no
6 evidence in this case that Mrs. Bullock believed and
7 relied upon anything that Philip Morris said or didn't
8 say about addiction.
9 Secondly, I think, we think, I believe
10 that the evidence is going to show that whatever level
11 of nicotine dependence -- which is the scientific term
12 that people use for addiction -- that Mrs. Bullock
13 suffered from, she wasn't addicted in 1966 when she
14 started smoking Benson & Hedges when she was still
15 playing around with smoking.
16 But more importantly, ladies and
17 gentlemen, she could have quit even after that. No one,
18 no expert is going to come into this courtroom and tell
19 you that there is such a person as one who cannot quit.
20 I know that some of you probably believe that that's not
21 what the people who deal with addiction and who treat
22 smokers believe. They believe anybody can quit if they
23 want to.
24 More importantly, though, is
25 Mrs. Bullock's own personality, which I am going to come
26 to in just a second; but what you are going to learn in
27 this case and you can probably tell it from this graph I
28 had a few minutes ago showing the decline in the number

1027

1 of cigarette smokers, is that over 50 million Americans
2 have stopped smoking in this country over the -- since
3 1964. 50 million.
4 There are more ex-smokers today than there
5 are smokers. Half of all the living Americans who ever
6 smoked have stopped. The overwhelming majority of those
7 people stopped with no professional help, no Zyban, no
8 gum, no nicotine inhalers. They stopped on their own,
9 and many of them were addicted. Many of them were
10 addicted.
11 You can stop. Mrs. Bullock didn't, and we
12 believe the evidence will show she didn't because she
13 didn't want to until the mid-1990s. We believe that the
14 evidence will show that she made no serious efforts to
15 stop smoking before the mid-1990s.
16 The hypnosis that counsel talked about

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this morning, we have no way of corroborating that there ever was any such hypnosis. Mrs. Bullock is unable to remember who the hypnotist was, where it was, how many sessions she went to, what aftercare instructions there were, what they told her, nothing. She simply says, "I went to a hypnotist once."

There are no prescription records showing any purchases of nicotine gum or nicotine inhalers or nicotine patches before about 1996; and until about then, you had to have a prescription to get that stuff. There are no prescription records before then.

She never did any of the things -- you are

1028

going to hear about it from witnesses for the plaintiff, what you do when you want to stop smoking and some of you know. You have to have a plan. You have to have a -- you have to get your act together. You have to be motivated. You have to have to make a firm decision, but you have to do some other things that if you are serious about quitting, Mrs. Bullock never did.

For example, she never threw away her cigarettes. Never threw them away. Never threw away her ashtrays. Never threw away her matches or her lighter. She never joined any of the support groups or organizations that help you stop smoking. She never got together with friends and developed a program. She never did any of the basic fundamental things that ex-smokers, those among you and the rest of the world know, it takes in order to stop smoking: A firm decision, a plan, motivation, and staying with it.

Now, obviously smoking is more difficult for some than it is for others like everything else in the world. There is no question about that; and there is no question that there came a point in time in which Mrs. Bullock was nicotine dependent or addicted; and I am not sure we've got anybody in this case who's going to be able to tell you the exact moment or the exact day when it happened; but there is no question there came a time when she did become nicotine dependent.

But the important point is who was Mrs. Bullock? What kind of a person was she? Well, you

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have already heard today that Mrs. Bullock was a very self-sufficient, very self-reliant, very strong-willed woman who made lots of tough decisions for herself as she went through life. Think about some of the facts that you heard a little about this morning and you are going to hear more about during course of this trial.

First at the age of 17 in 1956, all by herself, went across the country to Southern California, didn't have -- except for living with an aunt for a while -- didn't have a job. She found a job. Within a short period of time she found an apartment. She enrolled part-time in college. She got married. She got divorced. She quit smoking when she was pregnant, for whatever reason. The fact of the matter is, she made a decision not to smoke anymore while she was pregnant.

She went back to South Dakota for a while. When that marriage didn't work out, she came back out with her infant daughter. This is 1963; not 2002. Left all of her family and her friends in 1963, back across the country with an infant child, no job.

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22 Came back here and started life anew.
23 Got married again in 1966. She changed
24 careers several times during -- she was always trying to
25 better herself, always making decisions about life,
26 important decisions about life.
27 She decided to sell life insurance. She
28 went to school. Learned how to be a life insurance

1030

1 salesperson, got a license to sell life insurance; and
2 incidentally during the course of that, learned that, lo
3 and behold, they charge higher rates for smokers than
4 they do for non-smokers for life insurance.
5 Changed gears again a little bit later and
6 decided to become a nurse's assistant. Went to school,
7 took classes, worked in a home for the elderly. She
8 had -- she says she had a drinking problem in the mid
9 1980s. She joined AA and quit.
10 This is somebody who's made lots and lots
11 of decisions during her lifetime, tough decisions.
12 Decisions to do things; decisions not to do things. One
13 of the decisions she made was to smoke and to keep
14 smoking because it was her business.
15 Now, we had -- counsel pointed that out
16 this morning -- as part of the process of this case a
17 psychiatrist and a psychologist who specialize in
18 dealing with people who have substance abuse and
19 addiction and behavior control problems examine
20 Mrs. Bullock.
21 They met with her for several hours. They
22 conducted a standard psychological test. They reviewed
23 all of her deposition testimony. They reviewed her
24 daughter's deposition testimony. They reviewed all of
25 her medical records. They reviewed all of the testimony
26 of all of her physicians in this case.
27 And one of them, the psychologist, which
28 as I said, specializes in behavior control, among other

1031

1 things, will come here and testify. She will tell you
2 that Mrs. Bullock was a self-reliant, self-starting,
3 self-sufficient -- to use Mr. Piuze's term -- tough
4 individual who could have stopped smoking if she wanted
5 to.
6 That's what you are going to learn during
7 the course of this case; and if she had, she wouldn't
8 have lung cancer today.
9 Now, I want to talk to you for a few
10 minutes.
11 THE COURT: This is a good time to take a
12 break --
13 MR. BLEAKLEY: Okay. I will stop here.
14 THE COURT: We can take the break -- excuse me.
15 We are going to take a 15-minimum break. I would
16 admonish you once again do not discuss this case amongst
17 yourselves or with anyone else. Do not form or express
18 any opinion on the matter until it's finally submitted
19 to you.
20 Feel free, after you have stretched your
21 legs, if you want to come into the jury room, just come
22 on in and you can sit in there until we are ready to
23 resume.
24 Everyone else remain seated in the
25 courtroom until the jury has left.
26 (A pause in the proceedings.)

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27
28 (A recess was taken in the proceedings.)

1032

1
2 (The following proceedings were held
3 in open court within the presence of
4 the jury:)
5
6 THE COURT: The record will reflect all counsel
7 are present, the jury is in the box.
8 You may continue with your opening
9 statement.
10 MR. BLEAKLEY: Thank you, your Honor.
11 I told you that we were not going to spend
12 and I am not going to spend a lot of time trying to
13 defend all of the things that Philip Morris has said
14 over the years. I told you that the company has made
15 mistakes and done some things that it shouldn't have.
16 There is one, however, one way in which I
17 am and we are going to defend the company, and it
18 relates to an issue raised by Mrs. Bullock this morning
19 when Mr. Piuze told you that there were various options
20 open to Philip Morris.
21 One of them, he said, was try and make a
22 safer cigarette. It did, and the evidence you are going
23 to see and hear in this case will demonstrate that
24 despite the mistakes that Philip Morris made over the
25 years, it did in fact start trying very, very early to
26 make a potentially safer or safe cigarette. A lot of
27 time and effort and money and talent went into trying to
28 make safer cigarettes.

1033

1 But first I want to stop for just a second
2 and talk with you more just a minute about this 1954
3 document, The Frank Statement, the newspaper
4 advertisement that appeared in some 400 newspapers
5 across the country, including the L.A. Times.
6 This is an important document, but it's
7 important for some reasons that counsel didn't mention
8 this morning.
9 First, this is 1954. Philip Morris and
10 the other tobacco companies were essentially
11 acknowledging to the American people that they had a
12 problem. They make reference to serious scientific
13 research that was being conducted by people who thought
14 that cigarette smoking causes lung cancer. They said no
15 serious research ought to be ignored. They said that
16 they did, in fact, not believe that their products were
17 injurious to health.
18 What counsel for Mrs. Bullock told you was
19 a flat-out lie in 1954; but what you are going to learn
20 is that in 1954, when The Frank Statement was issued, it
21 was not just the cigarette companies who were saying
22 that it had not been scientifically proven that
23 cigarette smoking causes lung cancer. This was, in
24 fact, not made up by the tobacco industry; but there
25 was, in fact, a substantial and serious controversy
26 going on among scientists in the 1950s about whether it
27 had or had not been proven that cigarette smoking causes
28 lung cancer. You are going to hear lots about it

1034

1 starting as early as tomorrow.
2 But for now the only thing I am going to

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3 show you is a statement made by the Surgeon General of
4 the United States in the forward to the 1964 Surgeon
5 General's report. I am just going to take a second to
6 explain to you how this came about.
7 In 1962, then President Kennedy and his
8 administration were concerned about all of the
9 controversy and all of the discussions about whether
10 cigarette smoking causes lung cancer; and he and the
11 then Surgeon General of the United States decided to
12 appoint a committee of distinguished scientists across
13 the country who had not openly taken a position one way
14 or the other on the issue to study all of the existing
15 evidence.
16 They did so for two years, and in 1964
17 they issued the 1964 Surgeon General's report in which
18 they concluded that the evidence established that
19 cigarette smoking causes lung cancer; but when they
20 issued that report, the Surgeon General of the United
21 States said in the forward to the report, "Few medical
22 questions have stirred such public interest or created
23 more scientific debate than the tobacco-health
24 controversy." This is the Surgeon General of the United
25 States in 1954, ladies and gentlemen. "The
26 interrelationships of smoking and health undoubtedly are
27 complex. The subject does not lend itself to easy
28 answers."

1035

1 That's what the Surgeon General said ten
2 years after The Frank Statement in 1954.
3 Now, what else did the cigarette companies
4 say that they would do in The Frank Statement? They
5 said this: They would create a world-class research
6 organization; and while counsel for Mrs. Bullock was
7 critical of that organization in his opening statement,
8 what you are going to learn during the trial of this
9 case is that over the next several years, that research
10 organization funded over $300 million worth of
11 scientific research on smoking and health, much of which
12 was published in peer reviewed scientific journals, was
13 conducted by scientists of reputation in no way -- in no
14 way associated with the tobacco industry other than
15 having received grants and the results of which have
16 been published in numerous Surgeon General's reports.
17 That's what the Council for Tobacco
18 Research did, the successor to the Tobacco Industry
19 Research Committee.
20 They also said in The Frank Statement that
21 they would cooperate with public health authorities; and
22 for a long time, ladies and gentlemen, they did just
23 that. Remember that in 1964 cigarette smoking was still
24 a basic part of American culture, and what a lot of
25 people including public health authorities thought was
26 that there should be a major focus on trying to develop
27 a safer cigarette, rather than just stamping out
28 smoking.

1036

1 And the government formed something called
2 the Tobacco Working Group, which was an organization
3 with people from the U.S. Public Health Service, from
4 the National Cancer Institute, from the cigarette
5 companies and from the scientific and medical community
6 at large; and for nearly ten years, maybe even longer
7 than that, I've forgotten, the Tobacco Working Group did

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8 just that: They looked for answers, they looked for
9 ways to make safer cigarettes.
10 In 1978 the Tobacco Working Group was
11 disbanded, not by Philip Morris or the cigarette
12 companies, but by the government, which by 1978 had made
13 a decision that they would prefer to spend their time
14 and effort and money stamping out smoking rather than
15 trying to develop a safer cigarette.
16 Perfectly reasonable and appropriate
17 decision for the public health community for the Surgeon
18 General to make; but it was they who decided to disband
19 the Tobacco Working Group, not the cigarette companies.
20 Since the disbandment of the Tobacco
21 Working Group, the relationship between the public
22 health community and the cigarette companies has not
23 been as good as it should be. There is no question
24 about it; but for a long time, they did what they said
25 they would do.
26 When the Tobacco Working Group was
27 disbanded, Philip Morris did not stop, however, with
28 what it had started back in the 1950s, which is try to

1037

1 find a way to make a safer cigarette. A term of art
2 that was used by the medical and scientific communities
3 back in those days was "a less hazardous cigarette."
4 That's the term you'd see in a lot of documents. It's
5 the term that a lot of people used.
6 Philip Morris started thinking about -- a
7 couple of those documents Mr. Piuze showed you were
8 actually documents reflecting some of the conversations
9 that were being held within the company about how
10 exactly how to go about trying to develop a safer
11 cigarette.
12 And the company did so starting back in
13 the 1950s. It developed what you all know and have
14 heard about, low-tar cigarettes, over the years; but it
15 did more than that. The company started many, many
16 years ago trying to develop what are called "alternative
17 cigarettes"; that is, things that are still cigarettes
18 that still have tobacco in them -- because after all, it
19 wouldn't be a cigarette if you didn't have tobacco in
20 it -- but which were very different and which hopefully
21 would be less dangerous.
22 They engaged in methods which you will
23 hear about during the trial of the selective reduction
24 or elimination of certain chemicals that were suspected
25 of being the bad actors in smoke, general reduction,
26 which is the reduction of tar and nicotine; but they did
27 a lot of other things.
28 One of the things that Philip Morris did

1038

1 is it spent several hundred millions of dollars
2 developing a cigarette that had virtually no nicotine in
3 it called "Next." Actually, there were two or three
4 brands of cigarettes that Philip Morris put out in the
5 late 1970s that had virtually no nicotine in them.
6 A lot of money and a lot of effort spent
7 on this, hundreds of millions of dollars. They built a
8 plant down in Richmond just for the purpose of making
9 Next. The Next cigarette was test marketed around the
10 country in the late 1970s, early 1980s. Unfortunately,
11 nobody would buy it and that failed in the marketplace.
12 But that didn't stop there. One of the

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things that scientists have thought for years and still think is one of the principal causes, if not the principal cause, of cancer is the burning of tobacco, the actual process of burning tobacco.

Many, many years ago, over 25 years ago, Philip Morris started trying to develop a cigarette that heated rather than burned tobacco in the hope that it would produce less carcinogens. This weird looking device here, the Accord, is the product of that research. It is in test markets across the United States now.

This device, with a battery, heats tobacco but doesn't burn it; and in the process creates far fewer of the chemicals that science thinks may be the things that cause cancer. The fact is, nobody knows for sure exactly what it is; but some of the chemicals that

1039

science believes are what cause cancer are produced in lower quantities than this.

I can tell you, you will learn in this case, that not just hundreds of millions but billions have been spent on this product; and some of the other cigarette companies have done similar things. It's in test markets right now. Whether it will prove to be any safer is very difficult to tell, because the only way you can tell whether something really is safer like this is to have it on the market for a long period of time and let epidemiology determine whether there is more or less cancer among those who use it.

But the fact of the matter is, Philip Morris has tried sincerely, genuinely, the organization from which -- for which Dr. Farone, who was mentioned earlier by Mr. Piuze worked, was a research organization at Philip Morris whose sole purpose for existing was to develop a safer cigarette.

They had 150 scientists when Dr. Farone went to work for them. By the time he left, they had 400 scientists working on nothing but an effort to make safer cigarettes.

Now, you may conclude at the end of this trial that Philip Morris was obstinate and foolish for not having come out unequivocally in admitting that cigarette smoking was bad, dangerous, caused cancer, and was addictive. You may very well not like Philip Morris; but it never got in the way of a genuine and

1040

sincere effort by the company to make safer cigarettes, and there was a very good reason.

There was a very good reason, ladies and gentlemen, for the company's effort to make safer cigarettes. They could make lots of money from that too.

Just think for a moment, as you listen to the evidence in this case, about how much money the first company who could come up with a safer cigarette would make. They had very good business reasons for doing it.

The fact of the matter is that even today in 2002, no one has yet been able to come up with a demonstrably safe or probably safer cigarette, but it hasn't been for trying. Scientists all over the world, not just at Philip Morris and the other American tobacco companies, but government scientists, private

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18 laboratories, foreign governments, foreign consortiums,
19 foreign tobacco companies, have tried for the last 35 or
20 40 years to come up with a probably safer cigarette, and
21 nobody has yet been able to do it.
22 But Philip Morris has been right there in
23 the forefront, despite all of the serious errors that it
24 has made over the years, in trying to develop such a
25 cigarette. No one has been able to do any better.
26 Targeting of kids. I am not going to say
27 very much about targeting of children at this time.
28 None of us wants Philip Morris or any other company

1041

1 targeting our children with products that are
2 potentially dangerous. I could -- as with many of these
3 other things, I could spend a lot of time trying to
4 convince you that the document or two that Mr. Piuze
5 showed you here earlier today do not, in fact, prove
6 that Philip Morris has deliberately targeted children.
7 But it's a little bit of a red herring in
8 this case, because Mrs. Bullock was 17 years old when
9 she smoked her very first cigarette, and you are not
10 going to hear any testimony that she was directly as a
11 child, when she was 12 and 13 and 14 years old, affected
12 by any marketing efforts that were directed at kids.
13 Those documents that Mr. Piuze showed you were documents
14 from 1981, a long time after Mrs. Bullock started
15 smoking.
16 One final point, and maybe it's sort of a
17 punch line or the most important issue in this case; and
18 that is, what, if anything, did Philip Morris say about
19 cigarettes that made Mrs. Bullock smoke or keep
20 smoking? I tried to jot down some of the things that
21 counsel for Mrs. Bullock represented to you this morning
22 were the facts, were the things that Mrs. Bullock
23 supposedly relied upon. I'm not sure I have them all
24 right, but I got a couple of them.
25 Philip Morris repeatedly denied that there
26 was any scientific proof. The tobacco industry told
27 Mrs. Bullock not to worry. Mrs. Bullock was aware that
28 Philip Morris said, "We wouldn't harm you." These are

1042

1 quotes. I may have missed a word or two, but they are
2 pretty close to the things Mr. Piuze said here this
3 morning. Philip Morris continued to deny any knowledge
4 at all of the health risks way after 1976.
5 Well, I'm going to suggest to you -- you
6 will decide, you are going to hear the evidence -- that
7 that is not the evidence that you are going to hear in
8 this case. That is not the evidence that you are going
9 to hear in this case.
10 I don't know whether Mrs. Bullock is going
11 to come in here and testify live or by videotape. I
12 don't know what their plans are. What I do know is that
13 Mrs. Bullock's deposition was taken in this case under
14 oath before a court reporter and videotaped last year in
15 2001.
16 She was defended by Mr. Piuze. He was
17 there in the room at the time, and I know what she said
18 then. I don't know what she will tell you if she comes
19 into this courtroom, but I know what she said and what
20 she didn't say then; and what she didn't say is any of
21 those things that I just read to you. None of them.
22 Now, you are going to get to see all of

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23 the testimony that she gave in this deposition during
24 this trial, all of it, about what she heard from Philip
25 Morris, what they told her, what she relied on. I am
26 telling you right now, I am guaranteeing you, you will
27 see all of it. No excerpts unless they are agreed upon
28 with counsel. You will get to see it all.

1043

1 I am not going to try to play it all here
2 now for you because it would be boring and it would take
3 too long; but I am going to play for you a couple of
4 things that Mrs. Bullock told us in her deposition about
5 what she heard from Philip Morris back in the 1950s,
6 1960s, and 1970s. This is an excerpt.
7 (Portion of videotape was played.)
8 MR. BLEAKLEY: Now, I just gave you a snatch of
9 what Mrs. Bullock has said already in the case. You
10 will see the rest of it, I guarantee you; and what you
11 will not see in that deposition is Mrs. Bullock
12 testifying that the tobacco industry said not to worry;
13 that it said, "We wouldn't harm you"; that it denied all
14 knowledge of any health risks way after 1976.
15 What you will learn is that Philip Morris
16 has acknowledged the existence of a statistical
17 association between smoking and lung cancer going way
18 back into the Seventies -- not as soon as they should
19 have, but they did -- and admitting that there was a
20 risk factor in the 1980s, again, perhaps not as soon as
21 they should have.
22 But you are not going to hear that
23 Mrs. Bullock believed expressed lies, statements made to
24 her assuring her that she wasn't going to get lung
25 cancer, because it didn't happen.
26 But, as you listen to the evidence in this
27 case, I am going to ask you to contrast what you just
28 heard and what you hear from Mrs. Bullock's deposition

1044

1 testimony in this case with what she was hearing from
2 her loved ones, from her doctors, from public health
3 authorities starting way back, at least to the 1960s, a
4 constant unrelenting message:
5 "Cigarette smoking is hazardous to your
6 health. Smoking causes lung cancer, emphysema, and
7 heart disease. Smoking kills. Smoking is aggravating
8 your chronic bronchitis. It is responsible for your
9 chronic obstructive pulmonary disease. You have the
10 lungs of a 90 year old. Stop smoking."
11 Day in, day out, this is what she was
12 hearing from people who had nothing except her interests
13 at heart; over and over again reputable, trustworthy
14 people.
15 Contrast that with what Mrs. Bullock says
16 she was hearing from Philip Morris over the years as you
17 listen to the evidence in this case, because if you do,
18 I am going to come back here at the end of this trial
19 and suggest to you, as I did at the beginning of this
20 trial, which is that Mrs. Bullock knew that smoking was
21 dangerous; she knew for 30 years that it was actually
22 damaging her health even as she did it; she knew that it
23 could cause serious disease; and that she, this
24 particular plaintiff, this smoker out of all the
25 millions of people who smoked over the last 50 years is
26 not entitled to recover in this case. Thank you.
27 THE COURT: Thank you very much. I appreciate

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28 the argument or opening statements of both counsel.

1045

1 We are going to take our afternoon
2 recess. We will resume again tomorrow morning at 9:00
3 a.m. I would ask the jury to remain for a bit.
4 And we will have a witness here at 9:00,
5 correct?
6 MR. PIUZE: Yes, sir.
7 THE COURT: Okay. That's fine. We are in
8 recess except for the jury.
9 MR. BLEAKLEY: The jury, okay.
10 THE COURT: I have some questions and some
11 information I wanted to check with them, but other than
12 that, we are in recess.
13 If you folks would like to step into the
14 jury room for a few moments, then we will have you back
15 here. I have some housekeeping matters. It's all I
16 really need.
17 (A pause in the proceedings.)
18
19 (The following proceedings were held
20 in open court within the presence of
21 the jury:)
22
23 THE COURT: Thank you. I'm sorry to take your
24 time, but we really do have some housekeeping matters
25 that I want to talk to you about.
26 Off the -- at the top, this is going to be
27 a long trial, and so it occurred to me that you ought to
28 be consulted about the possibility of working a four-day

1046

1 week so that you can go back to your employers and be of
2 value to that employer.
3 Now, sometimes the employer may say it's
4 not worth it for one day; but I have had other jurors
5 with other people whose appearance even one day a week
6 was critical. So I just -- let's start with a show of
7 hands -- there's a middle ground; and the middle ground
8 which is, which has nothing to do with your employers,
9 that we will work a five-day week except for such
10 special events as the Friday before Labor Day. We will
11 just let you take off and you can go back to work if you
12 want. You can't get paid, but if you are going to go on
13 a Labor Day weekend holiday, you get an extra day to get
14 a head start.
15 So in other words, rather than be
16 arbitrary, we are just so grateful to have you all here
17 and we recognize what a sacrifice it is, that we didn't
18 want to do anything to make it any tougher than it
19 already is.
20 So are there any jurors for whom their
21 employers would appreciate you working only a four-day
22 week as opposed to, you know, you shouldn't be doing
23 this anyhow? How many? So we have -- let's see. We
24 have one, two, three, four, five hands. Not great, but
25 okay.
26 How many of you would just as soon work a
27 five-day week and get this thing over as quick as we
28 can? And the rest of you just don't care.

1047

1 (Laughter.)
2 JUROR SMITH: I think a lot of them have
3 unlimited time. That's a factor too.

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JUROR: I'm retired.
THE COURT: There is one other alternative, I suppose. Those that wanted to work a five-day week, would work five, and those who wanted to work four, would work four, but that wouldn't work.
Let us play around with it a little bit.
Now, we do know because we will have -- here's the other alternative -- kind of a floating day. One of the jurors has already spoken about -- there's a holiday on September 16th, Yom Kippir, and we will -- you folks will be dark that day, so you can make plans for that.
The Friday before Labor Day, what day is that? August 30, we will be dark that day, so you all can do whatever you need to do and then you just take the holiday.
We will work a half a day on September the 16th. That's a Monday.
THE COURT: Yes, ma'am?
JUROR GEE: Can we work half a day on four days and then half a day on Friday so we won't have to go to work?
THE COURT: See, that doesn't help anybody.
(Laughter.)
THE COURT: Yes, sir.

JUROR: I second that.
JUROR: I third that, four and a half days.
THE COURT: Well, here's the problem and I got to tell you exactly what it is.
First of all, you only get paid for half a day and you get so little money anyhow.
JUROR MARTINEZ: I get paid full days.
THE COURT: I know you do, but if your -- I hear what you are saying.
Let me tell you a story. A judge in this court said, "Well, we are going to work a four-day week." And he said to the jury, "You just go right ahead and you put down on your records that you work a five-day week, and when it comes to your employers, we will sign off to show that you have worked all five days."
The lawyer who argued that case to the jury said -- it involved a case of misrepresentation -- and the lawyer said to the jury, "Misrepresentation can't be a big deal. After all, the judge just said that the jury could misrepresent."
That case, which had hundreds of thousands of dollars of a verdict, was reversed by the California appellate court on the ground that the judge allowed a misrepresentation on the part of the jury and the lawyer, who won, incidentally, he was the winning side, had to give back the money because he said -- so we cannot --

What I would have to do if we did a half a day, would have to be to write a personal letter to each of your employers and get their approval. So I think we are better off just not doing that.
And they are going to say, "What are you doing down there?"
Let me tell you a couple of other things. There is a phone number over there. Please look at it

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9 and write it down; [DELETE]. Yes, thank you. If
10 you have your little green card, it's there; and if
11 everybody has it but one person, I have one left.
12 Anyhow, we will give it to you. Carry that with you.
13 Because if you are late and you phone us
14 and say, "Look, I'm trapped on the freeway" or "I just
15 got off the freeway, it's a mess," we can conduct
16 business on this case; but if we are all just sitting
17 here looking at each other waiting for you to come in,
18 we are in big trouble.
19 Okay. Next issue. How to get in here.
20 If you come to the Grand Street entrance or you come to
21 the Hill Street entrance and you get there at five of
22 9:00, there is not a prayer of you getting in here
23 because the line is forever. So ignore those two
24 entrances, and let me tell you the two good entrances,
25 where they are short.
26 They both get you in on the second floor.
27 There is one on First street between Grand and Hill.
28 There's a side entrance. Not many people go in. You

1050

1 know, it's a line, but it's not a big line.
2 The other one is if -- do any of you know
3 where the Starbucks Coffee place is? Yeah, do you
4 know. Anyway, right next to there, if you go out of
5 there and you come again, there's an entrance to the
6 building right near where the jury assembly room is.
7 Again, it's not a very long line.
8 But if they are really long in those
9 places and you did not hear this here, I will deny it,
10 get -- near Starbucks, there is an escalator. Go down
11 two levels and that gets you into the judge's parking
12 lot. Directly opposite there, there's an entrance down
13 a long corridor and there are a couple of guards that
14 are there. The only people that go through there are
15 the judges and the sheriffs.
16 So you can go through there. It's
17 perfectly okay. They will go through the screening
18 device just like anyplace else. So those are three ways
19 of getting in; and use the last one sparingly because it
20 takes you a little longer just to get down there.
21 We start at 9:00. We break at 4:00. If
22 anybody has -- and this is even a single person; we
23 don't have to have votes on this -- if you've got a
24 special something that is happening and you want us to
25 break a little early that day, let us know. Let us know
26 as far in advance as you can so that we can call
27 witnesses.
28 As you may have heard, witnesses are

1051

1 coming from all over the country; and indeed, a few may
2 even come from out of the country. So they don't want
3 to come here to find that we have made a commitment that
4 we are going to break at 3:30 or 3:00 o'clock when their
5 plan is to go through until 4:00.
6 We may upon occasion, if we've got
7 somebody from out of the country, stay a little later
8 4:30, whatever; but we're not going to do it often. We
9 are not going to abuse it; but if somebody is really in
10 trouble, we will do it.
11 Similarly, and when I say important
12 events, I am even including, "I got to take my kid
13 somewhere. He or she has a recital or a performance or

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14 they are doing something tonight." I mean, your lives
15 are far more important than this, and we're grateful
16 that you are giving us this, and so we will attempt to
17 accommodate you; but be gracious to the lawyers and give
18 them time.
19 Anybody have any questions? Yes, sir?
20 JUROR SMITH: Letters to employers, will we be
21 getting that?
22 THE COURT: Absolutely.
23 JUROR SMITH: Okay.
24 THE COURT: You tell Mrs. Perez who you need us
25 to write.
26 PROSPECTIVE JUROR SMITH: Okay.
27 THE COURT: And what you would like us to say.
28 I can make a -- we can make phone calls saying, you

1052

1 know, "Is there some way you can pay a little extra?"
2 We know what the answer is going to be. Six two and
3 even, they are going to say, "We don't even want him
4 here for ten days, but we don't pay more than that."
5 But every now and then it happens; but the
6 problem with extending payment, as it's explained to me,
7 is it's a union contract in many cases; and so if they
8 have contracted with the union to pay ten days and they
9 pay you 11, guess what? The whole shop is now 11, and
10 they can't handle it.
11 So they -- and I have checked on that. I
12 thought, "Gee, what a convenient story," but it really
13 isn't a convenient story. It is really true. It just
14 works that way. So they are reluctant to give extra
15 days.
16 Anything else? Yes, sir?
17 JUROR SMITH: When I first was interviewed for
18 jury duty, I told that you my wife had jury duty on the
19 9th of September.
20 THE COURT: Please let me know.
21 JUROR SMITH: What do you need? You need her
22 name?
23 THE COURT: Where is she going to jury duty?
24 JUROR SMITH: Traffic court.
25 THE COURT: Where does she report?
26 JUROR SMITH: In traffic court.
27 THE COURT: You tell Mrs. Perez tonight. We
28 will contact the jury assembly room.

1053

1 JUROR SMITH: I will give you all the
2 information.
3 THE COURT: What I am hearing you say, so that I
4 am not going to louse it up, it would be a hardship to
5 your family to have both of you out?
6 JUROR SMITH: Correct.
7 THE COURT: And she is willing to have her
8 matter postponed until yours is done?
9 JUROR SMITH: Yes.
10 THE COURT: Okay. Done.
11 THE CLERK: Has she had it postponed before?
12 THE COURT: Who cares. We will do it again.
13 JUROR SMITH: She has.
14 THE COURT: That's all right. We will do it
15 again. They will yell at me, but they will do it.
16 Yes, sir?
17 JUROR BELLOSO: Is the jury room going to be
18 open in morning so I can come in?

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19 THE COURT: Yes, sir.
20 JUROR BELLOSO: Good.
21 THE COURT: Now, again, the jury room is open
22 all the time. Those front doors are locked.
23 (Laughter.)
24 THE COURT: Now, you were here early this
25 morning, and all you want to do is come in and go sit in
26 there?
27 JUROR BELLOSO: That's it.
28 THE COURT: That's fine. I get here at 7:00. I

1054

1 will open it up for you. That's not a problem.
2 Anything else?
3 JUROR SMITH: So when are we going to know? Can
4 we do it today --
5 THE COURT: Say?
6 JUROR SMITH: Can we vote on how many days we
7 are going to work today?
8 THE COURT: We have done it. It's going to be
9 five except for when you have a problem. Because there
10 are only five people, and I can't have five people tell
11 16 people --
12 JUROR SMITH: So we are working Monday through
13 Friday?
14 THE COURT: You're going to work Monday through
15 Friday except when you have holidays and except when you
16 let us know that you have a special problem, and we will
17 get this thing through.
18 JUROR: What happens if we have a physical or a
19 dental appointment. I could probably reschedule it.
20 THE COURT: Please do. That's the best thing to
21 do. Now, that's very noble of you to say, "I can
22 reschedule it." You may need help. You may need
23 somebody to call your doctor and verify that you are
24 here from 9:00 to 4:00.
25 But if one of you go, it's not as though,
26 well, the rest of us will work and we will tell you what
27 happens. We can't do it that way.
28 So you need to be here, and I will be more

1055

1 than happy -- Mrs. Perez usually is far more charming
2 than I am, and so she usually can accomplish it; but if
3 she can't, she'll say, "Here, talk to them." And I
4 will, and I'll try to see if I can't finesse it and move
5 it around.
6 Anything else?
7 THE COURT LIAISON: Your Honor, could you
8 mention that particular date, because I didn't hear you.
9 THE COURT: I did. I said we are going to break
10 at noon on Thursday, August 29.
11 Wait a minute. Not August 29th.
12 August 29, we are off all day. No. I'm sorry. I am
13 wrong. The 29th, we are off. We will work only a half
14 a day and we will break. The 16th we are off the whole
15 day, of September.
16 MR. BLEAKLEY: And the 30th.
17 MR. PIUZE: So Labor Day is going to be a fun
18 weekend.
19 THE COURT: You are going to have Labor Day.
20 You're going to have Christmas. You get all those
21 holidays.
22 (Laughter.)
23 THE COURT: Anything else? Okay. You all have

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24 A pleasant evening, and I will now hear my 4:00 o'clock
25 case. Here it comes.
26
27 (The following proceedings were held
28 in open court outside the presence

1056

1 of the jury:)
2
3 MR. LEITER: I just wanted to put on the
4 record, as I mentioned earlier, four objections.
5 THE COURT: Before you do, let me have one other
6 word with the lawyers.
7 MR. LEITER: Yes.
8 THE COURT: This is not -- it was fine today;
9 but I'm not going to have to play
10 looking-around-through-a-mine-field to figure out what
11 the evidence is going to be. If something goes on that
12 screen, I've got to see it. If a document is held up to
13 the jury in the course of the trial, I've got to see it;
14 and we can't play the trial where everybody is having
15 documents and I am seeing the back of them.
16 MR. LEITER: Okay. Your Honor, can you see the
17 screen from where you are?
18 THE COURT: Yes, I can see it now, and I will
19 move this if I have to; but if you are going to use any
20 of those, I would urge you to take your tripod and put
21 it over back there somewhere or wherever you want, and
22 make sure that I can see the document. Absolutely you
23 can work in there.
24 MR. PIUZE: No problem.
25 THE COURT: Okay. Because if there's an
26 objection, I am just dead as a door nail.
27 Okay. You want to put something on the
28 record?

1057

1 MR. LEITER: Yes, your Honor. These are
2 objections that the defense is asserting to items that
3 came up during the plaintiff's opening statement. They
4 are consistent with some of our motions in limine.
5 There are four.
6 The first is under the Noerr-Pennington
7 Doctrine. The plaintiff made reference to a contention
8 that this case is about the consequences of Philip
9 Morris' conduct to the government. We believe that is
10 prohibited by Noerr-Pennington.
11 There were also references to statements
12 made to Congress by the industry and to an allegation
13 that the industry was targeting congressmen. We believe
14 those are all prohibited by Noerr-Pennington and any
15 suggestion the jury should find liability for any of
16 that would be prohibited.
17 THE COURT: Stop there. Let me ask you a
18 question. Why weren't those objections made at the time
19 that they were said? To use a lawyer's phrase, how do I
20 unring that bell?
21 MR. LEITER: Well, the bell can't be unrung.
22 Your Honor could give a limiting instruction.
23 THE COURT: Prepare one. I will be glad to do
24 that.
25 MR. LEITER: I will do that, your Honor.
26 MR. PIUZE: Excuse me, one second.
27 THE COURT: You will get a chance to respond to
28 it.

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THE COURT: I don't do those without --
MR. PIUZE: All right. That's fine. Sorry.
MR. LEITER: The second is under the Federal Cigarette Labeling Act, there were references to advertisements by Philip Morris after 1969 and to allegations of youth targeting after 1969.

Those ads and those references are, we think, barred by the Federal Cigarette Labeling Act.

THE COURT: I'd like to see your writing. As I recall, what counsel said was, "Here was the original ad. Here's the second ad," end of that subject; and here are some statistical information that shows that they were interested in -- that youth people were part of what they were interested in.

They seemed -- they sounded to my ear as though they were two different topics. You may very well have material that -- in your written motion to which Mr. Piuze will respond that may focus that; and if it is appropriate, I will certainly give a limiting instruction.

MR. LEITER: Okay. Thank you, your Honor.
THE COURT: Was there a third one?
MR. LEITER: There were two more.
THE COURT: Okay.
MR. LEITER: There was a reference to the CEOs of the tobacco industries' testimony in 1994 and a reference -- and I believe I have this accurately -- that Mrs. Bullock couldn't believe that the CEOs would

purposely lie about life and death.
THE COURT: Right.
MR. LEITER: We think that crosses the line of the Myers and Naegele opinion. Certainly nothing could have happened before the plaintiff's opening statement that might have opened the door to references to that 1994 testimony.

And more importantly, as we pointed out in our reply brief to the motion we filed last week, the plaintiff's testimony so far as it currently exists on the record is that she did not believe those executives when she heard them.

THE COURT: Let me comment only to this extent, and I will confess I was somewhat surprised as well.

I understood you to say that any reference to the testimony of any executives before congress was going to be in response to testimony that they were going to proffer as to your client and that would not be a part of your opening statement; and so I was surprised to hear it.

That one I will put in the same category. As I say, had that one been made, I would have sustained that objection right then and we would have moved on; but it seems to me it is pretty much of a "no harm/no foul."

If there is no evidence on the part of the defendants to which Mr. Piuze is going to respond, then I would read an appropriate admonition provided it is

made, he gets a chance to look at it, and he gets a chance to respond to it. Go ahead.
MR. LEITER: The final matter, there was a reference in the plaintiff's opening statement to the

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5 toll from smoking in California being 40,000 deaths per
6 year. That's not a number that is tied to any
7 misconduct that is at issue in this case. It's a toll
8 from smoking, and it is suggesting to the jury that it
9 would be appropriate to find Philip Morris liable for
10 simply selling and manufacturing cigarettes.
11 THE COURT: Okay. Again, that falls in that
12 same category. You need to prepare a statement that you
13 would like. I understand what you are saying, and
14 Mr. Piuze needs to have an opportunity to read it and
15 evaluate it and respond to it. Okay.
16 MR. LEITER: Thank you, your Honor.
17 THE COURT: See you all tomorrow.
18 MR. PIUZE: While we are here --
19 THE COURT: Yes, sir.
20 MR. PIUZE: I don't have any objections, but I
21 have three head scratchers, and I will alert the court
22 and counsel to all of them.
23 It seems to me that there were three
24 motions -- three orders sought by the defense and I
25 believe obtained by the defense by way of motions in
26 limine and three separate areas of issues that they
27 wanted out of this trial that Mr. Bleakley put in the
28 trial.

1061

1 Of course, I don't object to that; but I
2 am confused and I don't want to be getting myself in
3 trouble or -- but here it is. Safer cigarettes. They
4 didn't want Farone to testify to safer cigarettes, and I
5 heard a couple minute's worth that Philip Morris was
6 working on safer cigarettes. He was their safer
7 cigarette man. So does that change anything?
8 Second, no talk about light cigarettes,
9 but he talked about low-tar cigarettes. It's the same
10 thing. Low-tar and lights, it's the same concept. They
11 wanted it out of the case. I pointed out to the court
12 that it's sort of an issue. They just made it an issue.
13 And the third thing, Ms. Bullock's [DELETE].
14 The court said that if I made an issue of
15 that, that certain other evidence might flow in, and I
16 didn't. Now, they have. So I don't need an answer
17 right now, but I am going to need some guidance from the
18 court about now what's expected of me.
19 THE COURT: Well, I guess the answer to that --
20 and I don't mind giving it to you now -- is for you to
21 indicate -- let's take them one at a time.
22 MR. PIUZE: Yes, sir.
23 THE COURT: The easy one is the alcohol use. If
24 I recall the motion in limine, and I don't have it fresh
25 in my mind, it was that we would not get into the area
26 of arrest and all of the things that went beyond that;
27 but if it was being offered to show, as I understood it
28 was, that it shouldn't be a difficult thing for her to

1062

1 do to get rid of smoking because she got rid of alcohol,
2 that may or may not be fair game; and I don't think that
3 was the subject matter of the motion in limine.
4 MR. PIUZE: The motion in limine was that I
5 should not claim -- I should not use the fact that she
6 was able to go to AA and stop drinking to show how hard
7 it is to stop smoking.
8 THE COURT: I don't think so at all. I don't
9 think that was their motion. I think originally --

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10 whoever made the motion --
11 MR. PIUZE: Me.
12 THE COURT: -- was so that she wouldn't -- so
13 they would not be allowed to go into arrests --
14 MR. PIUZE: Right.
15 THE COURT: Okay. But the fact that she was
16 able to rid herself of the problem of alcoholism, it
17 seems to me is fair game, if that's all they do with it;
18 but they cannot get into her arrests and they cannot get
19 into the argument that, "Aha, the reason that she did it
20 was because she was afraid of going to jail."
21 MR. PIUZE: Okay. Your Honor, what happened was
22 you granted my motion in limine.
23 THE COURT: I agree.
24 MR. PIUZE: And said that stuff is out unless
25 Piuze, you --
26 THE COURT: I understand.
27 MR. PIUZE: -- use the booze.
28 THE COURT: And they did it; and so we just need

1 to see how it plays out. If you have an instruction
2 that said says they made a statement of that and you
3 have heard no evidence on that, I will be glad to --
4 MR. PIUZE: I don't have a problem with having
5 it in the case, but now that they've made it an issue,
6 can I use it too without fear of these 20-year-old
7 citations coming in?
8 THE COURT: Well, the argument that she stopped
9 drinking out of fear of jail is not going to come into
10 this trial. It doesn't seem fair. I think Mr. Piuze is
11 right. You folks introduced her alcoholism, so if you
12 want to use it to show, "Okay, she was able to kick
13 alcoholism and, therefore, she should have been doing
14 this," well and good as long as you don't say -- you
15 don't say that the reason that she did it was because
16 she was afraid of going to jail or anybody raises the
17 fact that she has gone to jail on a misdemeanor charge
18 involving alcohol. I think that's not fair.
19 MR. PIUZE: Thank --
20 MR. LEITER: Just so we are clear, your Honor,
21 because we may come back to you on this, we won't do it
22 without coming back to you.
23 THE COURT: That's all I ask.
24 MR. LEITER: If Mr. Piuze makes an argument
25 through Mrs. Bullock or otherwise that she stopped
26 drinking, that just shows how horrible and terrible an
27 addiction smoking is that she was able to stop drinking
28 but she wasn't able to stop smoking, I am going to be

1 back here asking then for an opportunity to say the
2 reason why she stopped drinking is because she had a
3 motivation. I won't do it without raising it to your
4 Honor first.
5 THE COURT: The problem that you present to us
6 is that we shouldn't be in this area at all. There
7 should never have been a mention of her use -- of being
8 alcoholic.
9 MR. LEITER: I didn't say she was an alcoholic.
10 What I said is that she decided she had a drinking
11 problem and she conquered it.
12 THE COURT: I understand.
13 MR. BLEAKLEY: And I think that was --
14 THE COURT: But I understood that we were not

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15 going to touch that area because it opens up these
16 little doors to other things, and I didn't want us to
17 get into that.
18 MR. BLEAKLEY: That wasn't my recollection of
19 how that issue got resolved.
20 THE COURT: I am sure you would not have said it
21 if your recollection was as mine is, and I am not
22 suggesting bad faith. I am simply saying it has opened
23 up some areas that I wish weren't open, and we're going
24 to have to close those doors.
25 The second one was what, Mr. Piuze?
26 MR. PIUZE: Low-tar cigarettes.
27 MR. LEITER: Our motion --
28 THE COURT: Who cares.

1065

1 MR. LEITER: -- was to prevent the plaintiff
2 from offering evidence that we committed a fraud. We
3 did not move to preclude any evidence that Philip Morris
4 ever made low-tar cigarettes. That was never our --
5 THE COURT: You want to introduce evidence of
6 low-tar -- you want that to be an issue we talk about
7 here, low-tar cigarettes?
8 MR. PIUZE: Sure.
9 THE COURT: Then it's in.
10 MR. LEITER: If I can back up first. There's a
11 missing link in this discussion, your Honor. There is a
12 product defect claim in this case.
13 THE COURT: Okay.
14 MR. LEITER: And as part of the product defect
15 claim, the plaintiff is presumably going to try to show
16 that there was another alternative design that Philip
17 Morris might have explored that it didn't.
18 Mr. Bleakley's references to low-tar
19 cigarettes and the other products that the company has
20 developed is in response to the defective product claim
21 which is still in the case.
22 THE COURT: Okay.
23 MR. LEITER: The other low-tar issue is a
24 separate one and that's what your Honor excluded; and
25 that is, could plaintiff go further than say there was a
26 defective product claim in this, in my case? Could
27 plaintiff also argue that there were intentional
28 misrepresentations or intentional fraud in connection

1066

1 with low tar? And that's what your Honor excluded,
2 because this plaintiff never smoked low-tar cigarettes.
3 THE COURT: And that is correct. So where did
4 you plan to go with the low-tar cigarettes? Because I
5 think that is clear, and I remember in her deposition
6 she said she never smoked them; and you did not
7 cross-examine during the deposition on the issue of
8 low-tar cigarettes, and your expert also said he didn't
9 consider it.
10 MR. PIUZE: No. She never smoked what is
11 sometimes referred to as light cigarettes.
12 THE COURT: Okay.
13 MR. PIUZE: You know what, we will just have to
14 see how this one plays out. It is so muddy that I can't
15 follow the ball right now. So that's fine.
16 THE COURT: All right.
17 MR. PIUZE: And the third one had to do with the
18 safer cigarette thing; and the motion in limine was that
19 Farone, who was one of their chief scientists who was

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20 hired -- believe me, he was hired by Philip Morris to
21 make a safer cigarette -- they don't want him talking
22 about safer cigarettes.
23 MR. LEITER: Well, again --
24 MR. PIUZE: And then they start talking about
25 safer cigarettes, so I am befuddled.
26 MR. LEITER: Again, the motion with respect to
27 Dr. Farone was that he should not be allowed to get up
28 and say that a particular design is, indeed,

1067

1 scientifically proven to be safe or safer, because there
2 is no scientific test that would support that testimony.
3 THE COURT: Well, that's a different issue, and
4 that motion is going to be denied because --
5 MR. LEITER: Well, Your Honor, you granted that
6 motion.
7 THE COURT: No. But now in the context of
8 you've talked about a safer cigarette, if he gets on the
9 stand and he says -- I am going to make this up: "My
10 job working for Philip Morris was to make a safer
11 cigarette, and I created a cigarette that has no tars
12 and no everything, and here it is."
13 And they said, "Go take it and throw it in
14 the trash, because we don't want to make that. Because
15 if we do make that, then it will imply that we have in
16 the past been making unsafe cigarettes."
17 Assume that for a moment.
18 MR. LEITER: Okay.
19 THE COURT: Is it your position he couldn't say
20 that?
21 MR. LEITER: He could say most of it, but not
22 one piece of it, your Honor.
23 THE COURT: What piece?
24 MR. LEITER: Our position is he could say, "I
25 was hired to try to develop a safer cigarette, and they
26 told me to throw this design in the trash."
27 THE COURT: He can say, "I was hired and I did
28 it"?

1068

1 MR. LEITER: "I was hired. I came up with
2 something that I thought would be good, and they told me
3 to throw it away," hypothetically.
4 THE COURT: You and I are on that --
5 MR. LEITER: What he could not say is that "I as
6 an expert am here to tell you that that design, in fact,
7 is safe or safer."
8 THE COURT: Okay.
9 MR. LEITER: That's what he cannot say.
10 THE COURT: Wrong. If he's the expert and he
11 says, "In my opinion, I did this, and in my opinion, it
12 is safer," you can bring in another expert to say he's
13 crazy; but he's certainly, if he is an expert and has
14 been hired to do that, he's going to be able to give his
15 opinion.
16 MR. LEITER: Your Honor, the point of our motion
17 was there is no expert who can say any particular design
18 of cigarettes is, in fact, safe or safer. There's no
19 scientific test. There is no --
20 THE COURT: That's what you say; but if he says,
21 "I'm the expert and I look at it and I made it" --
22 assuming he's got the right qualifications, and he says,
23 "And this is it," you can ask him, "Isn't it true that
24 no other expert in the history of the world agrees with

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25 you, that you are the only" -- I mean, I don't know what
26 your cross-examination is going to be.
27 MR. LEITER: But, your Honor, the problem is
28 this is essentially a Kelley-Frye issue or a Daubert

1069

1 issue, if we were in federal court. It's not simply
2 that he can assert himself to be the expert. It's there
3 has to be, for him to offer that opinion, a scientific
4 basis for it --
5 THE COURT: Of course.
6 MR. LEITER: -- before we get to the issue of
7 whether we disagree with him or not, and our motion
8 simply said there is no scientific basis for that piece
9 of testimony.
10 THE COURT: Well, again, one of the big problems
11 that I always have is trying to rule in the abstract;
12 but under your theory, Thomas Edison could not come into
13 this court and say, "Electricity works."
14 "Oh, is there a body of evidence that --
15 "No, but I'll turn on the light bulb for
16 you."
17 So I need to hear a foundational
18 presentation from the person who is proffering his
19 testimony as to why he would be in a position to give
20 it. Because there's got to be somebody who's first, and
21 it cannot be the law that no new idea can come into a
22 court until there is a scientific basis based upon an
23 accepted community of science when this person comes in,
24 assuming this to be the case, and says, "I have invented
25 the only perfect X."
26 MR. LEITER: And that's fair, your Honor. We
27 would like to see what Dr. Farone's light bulb looks
28 like before the jury hears that testimony.

1070

1 THE COURT: Without a doubt. That's part of it.
2 You are absolutely right. There will have to be an
3 out-of-the-presence showing of the jury and an offer of
4 proof.
5 MR. PIUZE: Sure.
6 THE COURT: No doubt about it.
7 MR. LEITER: Thank you.
8 THE COURT: Have a pleasant evening.
9 MR. PIUZE: You too, your Honor.
10 MR. BLEAKLEY: Thank you, your Honor.
11
12 (The matter was continued to Wednesday,
13 August 21, 2002 at 9:00 a.m. for further
14 proceedings.)
15 * * *

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